



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord states that the tenancy started on January 24, 2015 and that a move-in inspection was done on January 25, 2017. The Landlord states that the Tenant attended the inspection and that a copy of the inspection report was given to the Tenant. The Landlord does not recall when the report was provided and thinks maybe a week later. The Tenant states that no copy of a move-in condition report was provided to the Tenant. The Tenant provides a copy of a text correspondence with the Landlord indicating that no copy was provided.

The Landlord states that the Tenant was not moved out until February 20, 2016. The Landlord states that the move-out inspection was conducted on February 20, 2017 however the Tenant became angry, refused to sign the inspection report and walked out. The Landlord states that the Tenant had hired cleaners but that they did not do a sufficient job so the Landlord had the unit cleaned on February 3, 2016. The Landlord states that the Tenant was not living at the unit at this time and was in the unit to February 20, 2016 making repairs. The Landlord claims \$330.00 for cleaning the unit. The Tenant states that he paid two persons to clean the unit and that he helped with the cleaning that took over 10 hours. The Tenant states that he paid \$200.00 for the cleaning. It is noted that nothing in the move-out report indicates an unclean unit other than a fixture and window coverings. The Landlord only provided photos of damages to the unit.

The Parties agree that the security deposit was dealt with in a previous hearing. In this previous Decision dated October 12, 2017, confirmed in a Review Hearing Decision dated February 9, 2017, the matters of rent payable after January 30, 2017, the end of the tenancy and the move-out report was determined: no rent payable was after January 30, 2017, the tenancy ended January 24, 2016 and the move-out report was completed on February 3, 2016 with the forwarding address provided on that date. In that the Decision the security deposit was also dealt with.

The Landlord states that the rent was \$2,150.00 and then states that it was \$2,200.00. It is noted that the Landlord indicates in the monetary worksheet that monthly rent of \$2,150.00 is being claimed. The Landlord states that the unit could not be rented for February and March due to the repairs that needed to be done. The Landlord agrees that the rent for February 2016 has already been dealt with in the previous Decision. The Landlord states that it took the month of March 2016 to obtain services and repairs and that the Landlord could not obtain anyone to make the repairs that month because they were either too costly or because they wanted cash. The Landlord states that the

unit was advertised online sometime in February or March 2016 and that a new tenancy was started in April 2016 but cannot recall when. The Landlord provides no documentary evidence of the advertisements. The Landlord states that the new tenancy was at a higher rental "because we did the work." The Landlord claims unpaid rent of \$4,300.00. It is noted that later in the hearing the Landlord states that a higher amount of rent was obtained from the next tenancy as it was only a short-term rental of two months. The Landlord cannot recall if other tenancies continued after this short term tenancy or not. The Landlord also states that the unit was not rented or advertised after this short term rental. (The Landlord gives vague and evasive evidence on this point)

The Landlord states that the Tenant did not do a good job of the repairs, left damages to the plumbing and washroom counter top and failed to clean the blinds. The Landlord claims \$7,411.95. The Landlord states that none of this work has been done to date and that the amounts claimed are quotes that include the cost of replacing a master key.

The Landlord states that the microwave was not working at the end of the tenancy and had to be replaced. The Landlord does not know how old the microwave was and states that the unit is over 18 years old. The Landlord does not know how the Tenant caused the microwave to stop working. The Landlord claims \$197.39 for the cost of a new microwave. The Tenant states that the microwave was working during the tenancy.

The Parties agree that one of the keys to the unit entrance door was not returned at the end of the tenancy. The Landlord states that because the Tenant was so angry at move-out the Landlord had security concerns and so changed the deadbolt. The Landlord claims \$143.85. The Tenant states that the key was lost during the tenancy.

The Landlord states that the Tenant damaged the balcony door and that although the Landlord provides and claims a quoted amount of \$463.30 the repairs were done by herself and the property manager at no cost to the Landlord.

The Parties agree that the Tenant did not return a fob and the Landlord claims the amount agreed to in the tenancy agreement of \$150.00. The Landlord does not recall how much was paid to replace the missing fob and provides no bill or receipt for the claimed cost. The Tenant states that the fob was lost during the tenancy.

The Landlord states that the Tenant failed to return a parking pass and claims \$100.00. The Landlord states that the pass was provided for guests. It is noted that the tenancy agreement indicates that the Tenant was not provided with a guest parking pass at the outset of the tenancy and no parking was provided for the Tenant's use.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In addition to giving vague and evasive evidence on ensuing tenancies, the Landlord gave contradictory evidence in relation to the repairs and parking passes and made two separate claims in relation to keys. For these reasons I do not find the Landlord's evidence overall to have much credibility.

As the Landlord does not know the age of the microwave and given the lack of evidence on how the Tenant caused the damage, I find that the Landlord has not substantiated that the Tenant left the microwave damaged beyond wear and tear. I dismiss this claim.

The Landlord's evidence is that the repairs to the walls, bathroom counter, blinds, and plumbing unit were either done to the unit before the tenancy in April 2016 or no repairs were done at all. It is clear that if repairs were done in March 2016 it was not for the amount claimed and the Landlord has not provided any receipts or invoices for these repairs. Given this contradiction I find that the Landlord has neither incurred the costs claimed or proven any other losses and I dismiss the claim for \$7,411.95.

Section 77(3) of the Act provides that a decision or an order of the director is final and binding on the parties. As the previous decision found that no rent was payable for February 2016 based on the finding that the tenancy ended on January 24, 2016, I find that the Landlord is not entitled to any unpaid rent.

Section 7 of the Act also provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the lack of supporting evidence of advertising and renting the unit and considering the lack of credibility in relation to why the unit was not advertised for March 2017 I find on a balance of probabilities that the Landlord has not substantiated that the Landlord took any reasonable steps to mitigate lost rental income claimed for March 2016. I dismiss the claim for lost rental income for March 2016.

As the Landlord did not incur any costs for the repair of the balcony door, I dismiss the claim. As the tenancy agreement does not indicate that any parking pass was provided to the Tenant I dismiss this claim.

Although the fob replacement cost set out in the tenancy agreement appears to be excessive, given that the Tenant did not provide any evidence of usual lower costs, I find that the tenancy provision is enforceable and that the Landlord is therefore entitled to the claimed amount of **\$150.00**.

Based on the undisputed evidence that the Tenant failed to return one key and that the tenancy did not end on good terms I find that the Landlord has substantiated that the Tenant caused the requirement for the replacement of the deadbolt. The Landlord is therefore entitled to the claimed amount of **\$143.85**.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the conflicting evidence of when the move-out report was conducted and the lack of photos or notations on the move-out report indicating that the unit was left unclean when the tenancy ended, the Tenant's evidence of having cleaned the unit thoroughly and considering the Landlord's overall lack of credibility I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left the unit unclean and I dismiss the claim for \$330.00. As the Landlord's application has met with very minimal success I decline to award recovery of the filing fee.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$293.86**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 24, 2017

Residential Tenancy Branch