



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on June 9, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 28, 2017 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on May 1, 2014 and ended on December 31, 2016. Rent of \$2,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. The security deposit was dealt with in a previous Decision dated July 14, 2017. The Parties mutually conducted both a move in and move out condition inspection with inspection reports completed and copied to the Tenant.

The Tenant states that the Landlord made frivolous claims against the Tenant in January 2017. The Tenant states that the Landlord abused the process by making its claim against the Tenant without listening to the Tenant and lots of the claims were either baseless or exaggerated. The Tenant states that the Landlord did a renovation to the unit after the end of the tenancy and was attempting to get the Tenant to pay for the costs of that renovation. The Tenant states that he missed work due to mental stress caused by the claim. The Tenant states that the proof of baseless claims comes from the difference between the current claims and the previous claims of the Landlord that were considered in the previous hearing. The Tenant states that a "whole bunch" of claims were removed for the current application. The Tenant claims \$3,132.30 for mental stress caused by the Landlord's claims.

The Landlord states that she did not include claims made previously because it took too long at the previous hearing for the claims made on the "little things that were damaged or dirty". The Landlord states that she did take into account wear and tear in making the previous claims and did not mean to cause the Tenant stress. The Landlord states that it is a fine line to determine damage over wear and tear and that if an item was damaged the Landlord claimed that damage against the Tenant. The Landlord states that the claims that were dropped from the past application could have been damages from wear and tear and that it was difficult to determine the Tenant's responsibility because the Tenant never reported any damages during the tenancy. The Tenant states that the Landlord's inability to distinguish between damage and wear and tear is

shown by her evidence at this hearing and proves how difficult it was to talk to the Landlord about wear and tear as she would simply argue that they were damages.

The Tenant states that at viewing the garage door was falling apart and not functioning. The Tenant states that the Landlord agreed that the Tenant could repair the door and be compensated by either a rent reduction or payment. The Tenant states that he had over \$10,000.00 worth of tools and that he required the garage to be secure for the storage of the tools. The Tenant states that he would not have rented the unit without a secure garage. The Tenant states that he never sent a bill to the Landlord or asked her for compensation prior to the end of the tenancy. The Tenant claims \$800.00 for its time. The Landlord states that the conversation at viewing was only "small talk", that the Tenant asked if he could change the door and the Landlord said "sure". The Landlord states that the door was heavy and was functioning with a deadbolt for security but when opened it would fall sideways and the corner would hit the concrete. The Landlord states that there was never an agreement for compensation and that the first she heard of this claim was in the dispute.

The Tenant states that during December 2016 and after showing the unit to prospective tenants on two occasions, the Landlord went through the unit and kept telling the Tenant of more repairs that were required to the unit. The Tenant states that the Landlord kept coming up with more and more repairs that were either unnecessary or not the responsibility of the Tenant and that these repeated baseless demands amounted to harassment. The Tenant states that the Landlord made 5 or more verbal demands, send 10 emails or texts, and made one to two calls each week demanding more. The Tenant states that due to the pressure he met all of the Landlord's requests even where the repairs were from normal wear and tear or were pre-existing to the tenancy. The Tenant states that he painted a ceiling, did touch ups and repaired a hole. The Tenant states that the paint was not new at move-in however the Landlord insisted that the Tenant paint the full walls where he patched and did touch ups. The Tenant states that the Landlord had not painted the unit just before he moved in and only

touched up areas of the unit walls. The Tenant states that the Landlord wanted the Tenant to paint everything fully. The Tenant states that he had to hire people to help him. The Tenant claims that the Landlord's behavior breached the Tenant's right to quiet enjoyment of the unit and the Tenant claims compensation equivalent to the one month's rent of \$2,000.00.

The Landlord states that the texts were not harassment and that the Landlord only sent requests. The Landlord states that the Tenant claimed all the Landlord's requests were not his responsibility. The Landlord states that the Tenant did nothing to the unit and did not paint the ceiling as requested. The Landlord states that the unit was in "shocking condition" on December 3, 2016 and the Landlord asked the Tenant to clean the windows and yard. The Landlord agrees that she did ask for some repairs and cleaning but neither were done in December 2016. The Landlord states that her intention was to get the house returned to the condition "the way it should be" and ready for another tenant. The Landlord states that previously she was in the unit for many repairs and never commented on the state of the unit however she did start in December because it was "in desperate need of work". The Landlord agrees that the Tenant was asked to paint the whole walls and that the Landlord had previously painted the walls in 2014 as evidenced by the date on the paint cans provided to the Tenant. The Landlord agrees that the Tenant made submissions in its evidence package about the paint being the Landlord's responsibility. The Tenant states that the color codes provided from the Landlord were from were for quart sized container of paint and not gallons as would be expected if the Landlord had used them to paint the whole unit. The Landlord agrees that the codes were for the quart sizes but that the Landlord did buy gallons for the painting in 2014. The Landlord states that she did not provide any supporting evidence of the last date the unit was painted as the receipts and bills are in storage.

The Landlord states that at approximately 1:00 p.m. on December 31, 2016 the Tenant was not finished moving and that he was not finished until January 1, 2017 when they

did the move-out inspection. The Landlord states that she was going to have tenants move into the unit for January 1, 2017 but that it was obvious in mid-December 2016 the unit would not be ready for another tenancy for the start of January 2017. The Landlord states that the unit could not be rented for January 2017 due to missing items, and damaged flooring and carpets. The Landlord states that the renovations done were from the damage left by the Tenant except for the installation of a stove and a pump. The Landlord states that the carpets were not installed until May 2017 due to the time it took for shipping. The Landlord states that other carpet stores were either too costly or they did not have sufficient supply on hand. The Landlord states that the unit was rented again in July 2017. The Landlord claims \$2,000.00 as lost rental income for January 2017.

The Landlord states that the Tenant left the carpets stained and with odors. The Landlord states that the carpets were new in 2012. The Landlord states that she did not obtain the services of a professional carpet cleaning company to determine if the stains and odors could be removed. The Landlord claims \$6,461.00 for the cost to replace the carpets with new carpets.

The Landlord states that the Tenant left the vinyl floor in the kitchen with tears, burns and cuts. The Landlord states that the vinyl floor was new in 2012 but that the documentary evidence to support this date is in storage and was not provided for this hearing. The Landlord claims \$1,122.12 for the replacement of the kitchen flooring.

The Tenant states that the Landlord has exaggerated the extent of damages. The Tenant states that the carpets were old and stained at move-in and that in error only one carpet was marked as stained at move-in. The Tenant estimates the carpets to have been at least 10 years old. The Tenant states that he had the carpets cleaned at move out by a professional carpet company. The Tenant states that the unit was completely cleaned by a professional cleaning company. The Tenant states that the crack on the kitchen floor were caused from being so old, that there were no burns and

that the only mark was a rust stain from a table leg that sunk into the floor as it was so old.

Analysis

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results.

While I consider that the Tenant likely did suffer significant stress from the Landlord's previous claims given that the previous Decision dated July 14, 2017 gave the Landlord leave to pursue them again I cannot now find the claims to have been an abuse of process or a breach of the Act. As a result I find that the Tenant has not shown that the Landlord breached the Act in making the previous claims and I dismiss the claim for mental stress.

Given the Tenant's evidence that during the tenancy he never asked the Landlord for compensation for the door repair and given the Landlord's evidence that no compensation was ever agreed to, I find on a balance of probabilities that the Tenant has provided insufficient evidence to support that any amount of compensation was agreed to for the repair of the garage door. I therefore dismiss this claim.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". Given the findings of the previous Decision that the Landlord made unreasonable claims and "was prone to exaggerate and make inflammatory statements", I tend to accept the Tenant's evidence that the Landlord exerted undue pressure on the Tenant to make repairs that were not entirely the responsibility of the Tenant. Accepting the Tenant's evidence of the number of times the Landlord contacted the Tenant about repairs I find that the Tenant has substantiated that the Landlord harassed the Tenant during the last month of the tenancy. However as the

Tenant did otherwise have peaceful enjoyment of the unit I find that the Tenant is only entitled to a lesser amount of **\$1000.00**. As the security deposit was dealt with in the previous Decision dated July 14, 2017 I dismiss the claim for its return. As the Tenant's application has met with some success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,100.00**.

Given the Landlord's evidence at the previous hearing that the unit was renovated after the end of the tenancy and considering that the Landlord has been found to exaggerate and to have harassed the Tenant to complete significant repairs I find that the Landlord's evidence of the extent of damage left to the unit is not credible and that the Landlord has not substantiated on a balance of probabilities that the Tenant causes a loss of rental income for January 2017. I dismiss this claim.

Policy Guideline #40 provides that the useful life of carpet or floor tiling is 10 years. There is no reference to linoleum which I take to have a less useful life than carpet or tile. Despite the Landlord being informed in the prior Decision about the policy guideline in relation to the age of building items being important to claims of damage to those building items the Landlord did not provide any supporting evidence of the age of the carpet or the linoleum. Given the Tenant's plausible evidence that the carpets and linoleum were old I find that the Landlord has not substantiated that the carpets and linoleum were less than 10 years old or that there was any useful life left to the flooring. As such I find on a balance of probabilities that the Landlord has not substantiated any loss in relation to the flooring and I dismiss the claims for their replacement. As none of the Landlord's claim has had merit I decline to award recovery of its filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I grant the Tenant an order under Section 67 of the Act for **\$1,100.00**. 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: December 8, 2017

Residential Tenancy Branch