



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, 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 Landlord applied on June 15, 2017 for:

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

The Tenant applied on September 28, 2017 for:

1. An Order for the return of part of the security deposit - Section 38.

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

Preliminary Matter

The Landlord states that it provided a copy of its evidence to support its own application to the Tenant and the Residential Tenancy Branch (the “RTB”) on November 15, 2017 by uploading the evidence to the Tenant’s application online. The Landlord states that it also mailed this evidence to the Tenant on November 27, 2017. The Landlord states that it was too busy to file the evidence sooner.

The Tenant states that it was not made aware that the Landlord was uploading its evidence online and that it did not receive the mailed evidence until December 1, 2017. The Tenant

states that as a result he did have sufficient time to submit its own evidence in rebuttal. The Tenant asks that the evidence package be set aside and not considered.

Rule 2.5 states that to the extent possible the applicant should submit copies of all documentary evidence to be relied on in the proceedings at the same time as the application is submitted. Where the party makes an online application for dispute resolution the applicant must upload the documents with the application or submit them to the RTB within 3 days of submitting the application. The Landlord made its application for damages to the unit on June 15, 2017. There is no evidence that the evidence submitted just before the hearing was unavailable at the time of making the application. There is no evidence that costs were only recently and by necessity incurred. There is only evidence that the Landlord was busy and I do not consider this a valid reason for not submitting the evidence in June 2016. To accept the evidence for consideration at this late stage would severally prejudice the Tenant as the Tenant was not left any time to respond. I therefore decline to consider the Landlord's evidence package.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on December 1, 2016 and ended on May 31, 2017. Rent of \$2,000.00 was payable monthly. The Landlord wrote the Tenant's forwarding address on the move-out inspection. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit and \$500.00 as a pet deposit. At the end of the tenancy the Landlord returned \$875.00 to the Tenant and currently holds the remaining \$625.00. The Parties mutually conducted both a move-in and move-out inspection with a completed report copied to the Tenant. The Tenant does not dispute the Landlord's claims of **\$52.02** for the damage of screens, **\$100.00** for damage related to dining room chairs, and **\$20.00** for a small lamp.

The Landlord states that the Tenant failed to leave the unit sufficiently clean. The Landlord describes the state of the unit and states that the Tenant had agreed to obtain a professional cleaner. The Landlord states that the Landlord incurred the costs of \$270.00 for 9 hours of cleaning by a 3rd party and \$90.00 for 3 hours of their own labour. The Tenant states that the

place was cleaned to a reasonable state and that it took the Tenant about 4 to 5 hours to clean. The Tenant states that the Landlord told the Tenant that they wanted him to hire a professional cleaner and yet the Landlord hired a friend and not anyone from a professional company.

The Landlord states that the Tenant left a water stain on the wooden bar counter top that was 7 or 8 years old. The Landlord states that it had to remove the original several coats of varnish and reapply several coats of varnish. The Landlord claims \$93.45 for labour and supplies. The Tenant states that there was a small water stain, that the claim of costs is outrageous and that the stain was more likely caused by an improper finish originally.

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. 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. Without any evidence to support the Landlord's description of the state of the unit at move-out, which sounds plausible, given the Tenant's equally plausible evidence of having left the unit clean, I find on a balance of probabilities that the Landlord has not met the burden of proof for this claim and I dismiss the claim for cleaning costs.

RTB Policy Guideline #40 Useful Life of Building Elements provides as follows:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed. There is nothing in the Guideline about wooden surface areas protected by varnish however the Guideline indicates that exterior moisture sealants have a useful life of 5 years and that indoor paint has a useful life of 5 years. Both can be seen as wood protectors. From this I determine that as the varnish on the bar counter that was beyond 5 years old it no longer had any useful life and therefore no loss was suffered. I must note as well that it can be expected to have wet drinks on a bar counter and I also would therefore consider a water stain as regular wear and tear. For these reasons I find that the Landlord has

not substantiated that the Tenant damaged the bar counter beyond wear and tear or that the Tenant lessened the useful life of the bar counter. I dismiss this claim.

Based on the agreed facts I find that the Landlord is entitled to **\$172.02**. Deducting this entitlement from the remaining security deposit plus zero interest of **\$625.00** leaves **\$452.98**. As the Tenants entitlement is greater than the Landlord's entitlement I decline to award recovery of the filing fee to the Landlord.

Conclusion

I Order the Landlord to retain \$172.02 from the security deposit plus interest of \$625.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$452.98**. 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 08, 2017

Residential Tenancy Branch