



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, 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 compensation - Section 67;
3. A Monetary Order for damages to the unit - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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.

Preliminary Matter

The Tenant states that the Landlord’s application has not spelled her name correctly and asks that it be corrected. The Landlord agrees to the correction. Given the Parties agreement, the Tenant’s name is provided correctly spelled on the style of cause for the Decision and Order.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy, under written agreement with two tenants, started on September 28, 2017 for a fixed term to end September 30, 2018. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. Rent of \$2,000.00 was payable on the first day of each month. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants.

The Landlord states that on November 18, 2017 the Tenant named as the only Respondent in the application, informed the Landlords in writing that she had moved out of the unit. On November 27, 2017 the Tenant informed the Landlord in writing that she was not moving back. The Landlord states that the second tenant named on the tenancy agreement moved out of the unit by November 30, 2018 and was not named in the application as the Landlord received no forwarding address for this person and was not able to otherwise locate where this person had moved to.

The Landlord states that two offers for a move-out inspection was left as messages with the tenant that was not named in this application. The Landlord states that this tenant never got back to them so they did the move-out inspection alone on December 1, 2017. The Landlord states that they received the Tenant's forwarding address before the end of November 2018. The Landlord provides a copy of the move-in and move-out inspection as evidence. The Tenant states that she received the offers for a move-out inspection and asked the Landlords if her presence was necessary. The Tenant states that the Landlord told her she was not necessary and that anything remaining from the security deposit would be returned if not needed for repairs.

The Landlord states that no rent was paid for November 2018 and the Landlord claims \$2,000.00.

The Landlord states that the unit was advertised for rent of \$2,000.00 per month on or about December 1, 2017. The Landlord states that they only received interest from one

prospective tenant in the middle of the month and that they entered into a fixed term tenancy agreement with this person on December 28, 2017 for monthly rent of \$1,850.00. The Landlord states that they reduced the rent in order to obtain the new renter. The Landlord states that since the Tenant ended the tenancy prior to the fixed term end date the Tenant is liable for the lost rental income associated with the new tenancy and the Landlord claims \$1,500.00, calculated as the loss of \$150.00 per month for the 10 months remaining on the Tenant's fixed term.

The Tenant states that she moved out of the unit due to violence against her from her ex-partner who is the other named tenant in the tenancy agreement. The Tenant provides a report from the police in relation to an incident that occurred on November 16, 2018 and the Tenant notes the previous conviction for family violence by the other tenant. The Tenant states that she attempted to obtain a statement confirming her eligibility to end the fixed term tenancy from both the police and the shelter that the Tenant went to from the rental unit. The Tenant states that the shelter staff refused to complete the statement as the staff had not witnessed any violence against the Tenant. The Tenant states that she tried to have the police complete the form but was informed that no abuse was found because of insufficient evidence. The Tenant states that she should not be liable for the lost rental income claimed as she believes that the Landlord could have found a renter without lowering the rent given the current very low vacancy rate.

The Landlord states that the Tenant left the unit unclean and damaged.

The Landlord claims \$350.00 as costs to repair the damaged crown molding removed from the top of a kitchen cabinet. No invoice was provided. The Landlord states that it received an estimate of \$500.00 from a handyman to do the job but did not provide that estimate. The Landlord states that it did the repair himself and calculates the amount based on his labour, travel time, gas and supplies. The Landlord states that he claims 10 hours of work at \$35.00 per hour. The Tenant states that there was no damage to

the moulding while she was in the unit and that her ex-partner was in the unit after she left.

The Landlord claims \$168.00 as the Landlord's labour costs to repair drywall. The Landlord states that the unit was left with picture hanging holes and that the walls in the kitchen and bathrooms were damaged. The Landlord provides no invoice and states that he charged a rate of \$30.00 per hour. The Tenant states that she has no knowledge of any damage to any kitchen wall and that they used both regular and picture hanging nails for the pictures.

The Landlord claims \$188.00 as costs to clean the carpet. The Landlord states that the cost claimed includes their labour, the rental of a machine for a full day and the cleaning supplies. No receipts for the rental of the machine or supplies were provided. No invoice for the labour costs was provided. The Tenant states that the carpets were relatively clean at move-in and were in the same condition at move-out.

The Landlord claims \$346.31 for paint supplies and \$1,020.00 for the labour costs to paint the entire unit. The Landlord states that the living room and master bedroom was last painted just before this tenancy started. The Landlord states that although they did not originally want to paint the entire unit after patching the holes the walls looked bad and needed both primer and paint coats. The Tenant states that when they moved into the unit the previous tenants had just moved out and that there was no time in between for the Landlords to have painted the unit. The Tenant states that there was no fresh paint in the unit at move-in.

The Landlord claims \$135.00 for the costs to replace missing items. The Landlord provides a receipt for curtain rods (\$89.00), a paint tray (\$10.00), a towel ring (\$18.00) and a towel rack (\$27.27). The Tenant states that the other tenant must have removed those items as these items were not missing while the Tenant was in the unit. The Landlord seeks this cost as a reduction of the original costs claimed of \$343.82.

The Landlord claims \$175.00 as the costs for 7 hours of cleaning by the Landlord at a rate of \$25.00 per hour. The Tenant states that the unit was not cleaned at move-out.

The Landlord states that after the Tenants moved out of the unit they had the utilities changed to the Landlord's name. The Landlord states that they did this to preserve their property but that the Tenant should pay the costs because they expected the utilities to be kept up until the end of the fixed term. The Tenant states that she is not responsible for utilities because neither the unit nor the utilities were used by the Tenant.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence of the terms of rent payable under the tenancy agreement and of the undisputed evidence of unpaid rent for November 2017 while the unit was occupied by the Tenants, I find that the Landlord has substantiated an entitlement to **\$2,000.00**.

Section 45(2) of the Act provides that a tenant may only end a fixed term tenancy for the end of the fixed term. Section 45.1(2) of the Act provides that a tenant is eligible to end a fixed term tenancy early if a confirmation of eligibility statement is made confirming that, inter alia, if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant. A tenant under this section must still provide a month notice to end the tenancy. A tenant under a fixed term tenancy may only otherwise end the tenancy for the end date of the fixed term tenancy as provided by section 45 of the Act. As the Tenant did not obtain the required confirmation of eligibility to end the fixed term due to family violence, I find that after the Tenant moved out of the unit the Tenant remained obliged to pay rent to the end of the fixed term.

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. This section further 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. It is undisputed that the Tenant ended the fixed term tenancy prior to the end date. Although the Tenant argues that the vacancy rate is very low I accept the Landlord's otherwise undisputed evidence that only one tenant showed interest in the unit. Given the Landlord's evidence of advertising the unit and reducing the rent to obtain a long term tenancy, I find on a balance of probabilities that the Landlord took reasonable steps to mitigate any claim for lost rental income from the Tenant and find that the Landlord is therefore entitled to its claim for **\$1,500.00**.

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 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. The move-out report was not duly completed as neither of the Tenants were present for the inspection. Based on the Tenant's undisputed evidence I accept that both Tenants were given offers to do a move-out inspection however I also consider the Tenant's undisputed evidence that the Landlord told her that her presence was not necessary, despite the Landlord's evidence that the other tenant did not reply to the move-out inspection request. I find this behavior of the Landlord to be somewhat disconcerting. As a result I consider that the Landlord failed to make a valid offer to the Tenant to attend the inspection and that the condition report may therefore not be given the same weight as from an otherwise duly completed report. There is no photo of any damage to crown molding above the kitchen cupboards although the Landlord has provided a photo of what appears to be a filled

gouge by the top of a cupboard. Further the Landlord gives evidence of its claim for costs to include travel, time, gas and supplies and also gives contradictory evidence that its claim for costs is solely based on labour costs. For the above reasons and considering the Tenant's evidence that there was no damage to crown molding when she left the unit, I find on a balance of probabilities that the Landlord has not substantiated either the extent of damage or the extent of the costs claimed and I dismiss this claim.

Given the photos of wall holes and the Tenant's evidence that some nails were used to hang pictures I find that the Landlord has substantiated that the Tenant left some walls with damage. However the Landlord provided no invoice setting out the hours or labour costs being claimed for the wall repairs. The Landlord's oral evidence of the hourly rate for this claim is different from the oral evidence of the hourly rate for the molding repair and I note that the total amount claimed does not align with the hourly rate stated. For these reasons I find that the Landlord has not substantiated the costs claimed and is only entitled to a nominal sum of **\$50.00** for the Tenant's breach.

Given the Tenant's evidence that the carpet was left as clean as it was received, considering that the tenancy was only 2 months long, that the move-out report is not helpful, there are no photos of a dirty carpet, and finally that the Landlord's claim for costs is not supported by an invoice with receipts for out of pocket costs, I find on a balance of probabilities that the Landlord has neither substantiated the damage claimed or the costs claimed for the carpets. I dismiss the claim for cleaning the carpets.

Policy Guideline #40 provides that the useful life of interior paint is four years. The Landlord's evidence of previous painting of the unit was limited to two rooms and I considered the Landlord's evidence to be evasive for the remaining unit. As a result I prefer the Tenant's evidence that none of the unit was painted at move-in and find that the Landlord has not substantiated that the unit was painted within 4 years of the end of the tenancy. Given the Landlord's evasive evidence I consider that the Landlord has

exaggerated the damage claimed and I dismiss the claim for the paint labour and supplies.

As the Landlord did not provide any invoice setting out any hours for any of the rooms I find that the Landlord has not substantiated the amount claimed and I find that the Landlord is only entitled to a nominal amount of **\$50.00** for the cost to paint two rooms that were left damaged.

Based on the Landlord's undisputed evidence that items were missing at the end of the tenancy and considering the receipts provided I find that the Landlord has substantiated the costs claimed for the curtain rods (\$89.00), a towel ring (\$18.00) and a towel rack (\$27.27). As the claim for the paint tray is more likely associated with paint costs and not a missing item, I dismiss this claimed cost. The Landlord is therefore entitled to **\$125.00**.

Based on the undisputed evidence that the unit was not left clean at the end of the tenancy and considering that the amount being claimed is reasonable given the size of the unit, I find that the Landlords are entitled to the costs claimed of **\$175.00**.

As the Landlord incurred utility costs for their own benefit and not as a result of any usage by the Tenant I find that the Landlord has not substantiated that the Tenant caused any utility loss as a result of the early end of the tenancy. I dismiss the claims for utility costs

Finally and for the benefit of the Tenant I set out Policy Guideline #13 that provides that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. A landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,000.00**. Deducting the security deposit plus zero interest of **\$1,000.00** leaves **\$3,000.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain security deposit plus interest of \$1,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$3,000.00**. 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: August 15, 2018

Residential Tenancy Branch