



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant 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;
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 Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

Tenant JC did not attend the hearing. The Landlord states that Tenant JC never provided a forwarding address so the Landlord served Tenant JC with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail to this Tenant’s last known address at his mother’s residence.

Section 89(1) of the Act provides that an application for dispute resolution must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is no evidence that the Tenant resides at his mother's residence, I cannot find that service has been accomplished in accordance with the Act and I therefore dismiss the application as against Tenant JC.

The Parties confirm that the Landlord did not collect any security or pet deposit for this tenancy. As a result I find that there is no security deposit being held by the Landlord to claim against and I dismiss the Landlord's claim to retain a security or pet deposit.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy, under written agreement, started on June 1, 2017. Rent of \$2,000.00 was payable on the first day of each month. No security or pet deposit was collected. The Tenants paid \$1,000.00 for rent for October 2017 and the Landlord subsequently served the Tenants with a 10 day notice to end tenancy for unpaid rent with an effective move-out date of October 24, 2017 (the "Notice"). The Tenants moved out of the unit on that date. Although the Parties did a walk through inspection of the unit at move-in no move-in condition report was completed and copied to the Tenants. The Landlord completed the move-out report herself. The addendum to the tenancy agreement provides that the Tenants pay \$350.00 to the Landlord each month for utilities. Prior to this tenancy Tenants CR and

AL had been in a tenancy at this unit since August 2015 and this tenancy ended when Tenant JC moved into the unit and the new tenancy agreement was signed.

The Landlord claims unpaid rent of \$1,000.00. The Tenants do not dispute this claim.

The Landlord states that the Parties mutually conducted a move-in inspection but that no report was completed. The Landlord states that the Tenants were given opportunities to conduct a move-out inspection but refused to attend. The Tenants state that no opportunities for a move-out inspection were given to the Tenants. It is noted that the move-out inspection report provided by the Landlord as evidence was not dated. The Landlord states that the Tenants never provided any forwarding address and that Tenants CR and AL were located through their employer.

The Landlord states that the Tenants left the carpets in the two bedrooms stained and dirty by their dog. The Landlord claims \$298.80 for the costs to clean the carpets and provides both a receipt and photos of the carpets. The Tenants state that the carpets were cleaned twice between October 18 and 23, 2017 and provide photos of the carpets.

The Landlord states that the Tenants left every wall in every room, including closets, damaged with scratches and dents. The Landlord states that the walls had to be patched and then painted. The Landlord provides an estimate for painting the walls in the amount of \$3,400.00. The Landlord states that although the painting was done the Landlord did not provide the receipt as proof that the costs were incurred. The Landlord states that the walls were last painted 10 years ago.

The Landlord states that the Tenants removed an amount of rocks that were on their landing when they removed dog feces. The Landlord states that the rocks were replaced, provides the receipt dated October 28, 2017 and claims the cost of \$209.44. The Landlord provides photos of the area. The Tenants deny that they caused the rocks

to be diminished and that the area is used by all the residents of the building. The Tenant also states that the Landlord is claiming costs for rocks that are more expensive than the original rocks. The Landlord states that simply walking would not remove the amount of rock that was lost in the area that the Tenants allowed their dog to use. The Landlord provides a photo of the garbage and states that this photo shows rock and feces in the garbage. The Landlord is not aware of any difference in the rocks purchased from the original rocks.

The Landlord states that the Tenants left garbage in the bins and around the bins and that the Landlord had to haul the garbage away to the landfill. The Landlord claims \$16.50 as the landfill costs. It is noted that the receipt is dated March 7, 2018. The Landlord states that she was unable to remove the garbage herself and was not able to obtain assistance until that date. The Tenants state that they left no garbage outside the bins and that the Landlord's photos show no garbage left outside the bins. The Tenant states that garbage collection was included in the rent.

The Landlord states that the Tenants failed to pay the utility amounts for September and October 2017 and claims \$695.00. The Tenants state that they paid the utilities for September 2017. The Tenant states that the Landlord's Notice sets out only \$345.00 owed for October 2017. The Tenant states that on March 8, 2018 the Landlord also served the Tenants at their new address with a second 10 day notice to end tenancy for unpaid rent and states that this notice only indicates that \$350.00 is owed for utilities. The Landlord confirms that no accounting records showing the collection of rents or utilities has been provided as evidence.

The Landlord states that the Tenants did not give any notice to end the tenancy, left the unit in bad shape, and as a result the Landlord was unable to rent the unit for November 2018. The Landlord agrees that the Tenants complied with the move-out date on the Landlord's notice to end tenancy.

Analysis

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. Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the agreed facts that the Tenants did not pay the full rent for October 2018 I find that the Landlord has substantiated the unpaid rent claim for **\$1,000.00**.

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. As the Landlord's carpet photos are close up and do not depict a clear view of the carpet, given the Tenant's photos that clearly show carpet cleaning lines and a clean carpet, and considering that the tenancy was very short, I find on a balance of probabilities that the carpets were not left stained or dirt. I dismiss the Landlord's claim for carpet cleaning costs. I note that although Tenants CR and AL occupied the unit prior to the tenancy that is the subject of this dispute, no damages from that prior tenancy may be considered in this application as such damages would only be claimable under that prior tenancy agreement.

Policy Guideline #40 provides that the useful life of interior paint is 4 years. As the paint on the walls was 10 years old I find that there was no value to the paint. For this reasons and as the Landlord has not provided any evidence of the costs associated with the wall damage in the invoice, I find that the Landlord has not substantiated any portion of any costs claimed for painting the walls and I dismiss this claim.

Although it may be that some rocks were removed as an incidence of feces collection, given the undisputed evidence that other persons used the same area, and considering the very short term of the tenancy, I find on a balance of probabilities that the Landlord has not shown that the Tenants were the sole cause of damage to the rocks. I therefore dismiss the claim for rock replacement.

Given the date for the receipt of items taken to the landfill, I consider that over the 4 months after the end of the tenancy any garbage that may have been left outside the bins could have been placed in the bins for the garbage collection that is provided for under the tenancy agreement. Further the Landlord's photos do not show any garbage left outside the bins. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Landlord took any reasonable steps to reduce the costs being claimed for garbage removal or that the Tenants breached any part of the tenancy agreement in relation to garbage by leaving garbage outside the bins. I therefore dismiss the claim for garbage removal.

Given the Tenant's undisputed evidence of the amount of outstanding utilities set out on the two notices to end tenancy for unpaid rent or utilities and given the lack of supporting accounting documents from the Landlord, I find on a balance of probabilities that the Tenants did pay the utilities for September 2017. As the payment for utilities for October 2017 was not disputed, I find that the Landlord has substantiated a claim for only **\$350.00** for unpaid October 2017 utilities.

Based on the undisputed evidence that the Tenants complied with the Landlord's notice to end tenancy I find that the Landlord has not substantiated that the Tenants breached the Act by moving out of the unit without any notice. The Tenants were not required to give notice as the Landlord ended the tenancy. Further the Landlord has not substantiated that the Tenants caused any damage to the unit that would have resulted in any delay in renting the unit again. As a result I find that the Landlord has not

substantiated that the Tenants caused any lost rental income for the Landlord and I dismiss this claim.

As the Landlord's claims have met with some success I find that the Landlord is entitled to recovery of the **\$100.00** for a total entitlement of **\$1,450.00**

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,450.00**. 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: October 24, 2018

Residential Tenancy Branch