



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, 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 damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on March 15, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on March 20, 2018. The Landlord was given full opportunity 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 tenancy started on June 1, 2013 and ended on February 28, 2018. Rent of \$1,150.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$575.00 as a security deposit. The Landlord is still holding the full security deposit. The Parties mutually conducted both a move-in and move-out condition inspection with completed reports copied to the Tenant. The Tenant provided the forwarding address on the move-out report dated February 28, 2018.

The Landlord states that on July 25, 2016 the Landlord was informed of a leak from the unit coming into the lower unit. The Landlord states that the Landlord inspected the leak from the lower unit with the insurance company present and it was determined that the leak was coming from the upper unit Tenant's kitchen and not from any pipes. The Landlord states that the leak extended to the lower unit causing damage to that lower unit. The Landlord states that the Tenant never reported any problem with the dishwasher. The Landlord states that the Tenant refused the Landlord access to the unit and that the Landlord did not give the Tenant any notice of entry to the unit to inspect the dishwasher. The Landlord states that the dishwasher was not inspected until the end of the tenancy and that no issue was found with the dishwasher. The Landlord states the he believes that the Tenant caused a flood in the unit that caused the leak to the lower unit. The Landlord states that although the Tenant was required to obtain insurance the Tenant informed the Landlord that they did not have insurance. The Landlord states that the Landlord did not carry insurance either. The Landlord states that the repairs to the lower unit were made by the Strata with the Strata's insurance. The Landlord states that the Strata assigned their deductible costs to the Landlord and the Landlord claims this cost of \$5,000.00. The Landlord provides a letter from the Strata setting out the assignment of these costs to the Landlord's account.

The Landlord states that the Tenant failed to leave the unit clean and claims the estimated costs of \$300.00. The Landlord states that the Tenant left the carpets stained requiring their replacement. The Landlord claims the estimated cost of \$800.00. The

Landlord states that the flood in the unit caused damage to the laminate flooring and claims the estimated repair costs of \$1,000.00. The Landlord states that the Tenant left the cabinet doors and drawers damaged and claims the estimated repair costs of \$300.00. The Landlord states that the Tenant left the casing around the front door damaged and claims the estimated repair costs of \$100.00. The Landlord states that the Tenant left the stove panel with scratches and claims an estimated repair or replacement cost of \$125.00. The Landlord provides photos. The Landlord states that the unit was sold after the end of the tenancy. No receipts were provided or made available for this hearing to substantiate that the costs being claimed were incurred.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred.

Given the evidence that the unit was sold and that the Landlord provided no evidence that the costs being claimed were incurred I find that the Landlord has not substantiated an entitlement to the costs claimed in relation to the damages to the unit. However based on the undisputed evidence of the damages I find that the Landlord has substantiated that the Tenant failed to leave the unit reasonably clean and undamaged. The Landlord is therefore entitled to a nominal sum of **\$100.00** for this breach by the Tenant.

Based on the Landlord's undisputed evidence that the Tenant caused a flood that created damage to the unit below, that the Tenant failed to carry insurance as required

by the tenancy agreement, and given the evidence of the assignment of the Strata's insurance deductible costs to the Landlord's account, I find that the Landlord has substantiated that the Tenant caused the damage claimed by either act or negligence and that the Landlord incurred the costs claimed for this damage. I find therefore that the Landlord has substantiated an entitlement to **\$5,000.00**. As the Landlord has been successful with its largest claim I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,200.00**. Deducting the security deposit plus zero interest of **\$575.00** from the entitlement leaves **\$4,625.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$4,625.00**. 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 10, 2018

Residential Tenancy Branch