Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNR, 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 or utilities - Section 67;
2. A Monetary Order for damage to the unit - 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 Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord confirms that Landlord DA is not a landlord on the tenancy agreement and was only an investor. Without evidence that the investor was also an owner, as an investor is not included in the definition of a landlord under the Act, and as Landlord DA is not named as a landlord on the tenancy agreement, any monetary order granted as a result of this dispute will be restricted to only Landlord AW.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on December 1, 2017 and ended on May 15, 2018. Rent of $1,700.00 was payable on the first day of each

month. In addition to rent the Tenants were required to pay 50% of utilities other than water and sewer. At the outset of the tenancy the Landlord collected $850.00 as a security deposit and $850.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed condition report copied to the Tenants. The Tenants provided their forwarding address on May 21 or 22, 2018.

It is noted that the Landlord gave inconsistent evidence on the above facts before then agreeing to the facts as stated by the Tenants.

The Landlord states that he believes that he made two offers to conduct a move-out inspection. The Landlord states alternatively that he does not recall the specifics and that he made an offer about a week before he went through the unit himself. The Landlord states that the house was being sold, that the unit was listed for April 2018 and that the unit sold on June 1, 2018. The Landlord states that no dated can be recalled and that he did not record any of the offers for the inspection. The Landlord states that he made an offer to the Tenant by text. The Landlord states that he did inspect the unit himself and did fill out the condition report. The Landlord also states that he is pretty sure he filled out the condition report. The Landlord states that no copy was provided to the Tenants. The Tenant states that the Landlord only made one offer for May 17, 2018 and that the Tenants could not attend on this date due to a funeral. The Tenant states that no other offers were made.

The Landlord states that the Tenants failed to pay the last gas bill and claims $135.51. The Landlord states that he believed it was for the period April to May 2018. The Landlord did not provide any invoice. The Tenant states that she does not know how the Landlord came to this amount and that no invoice or bill has ever been provided to the Tenants for this claim.

The Landlord states that the Tenants left the flooring with damage. The Landlord states that the flooring was never replaced for the estimated cost of $9,117.68 that the Landlord claimed in the application. The Landlord states that he incurred costs of about $800.00 to repair sections and that the floors were patched. The Landlord withdraws the claim and then states that he is not withdrawing the claim. The Landlord then claims $1,000.00. The Landlord provides photos. The Tenant states that they are not responsible for the costs claimed as the Landlord did not provided any evidence of any flooring costs. The Tenant states that the floors were never

repaired. The Tenant states that the damages were exaggerated by the photos and that while the Tenants offered to bring someone into the unit to make repairs but that the Landlord did not allow the Tenants to make these repairs as the Landlord informed the Tenants that the flooring was “beyond repair”.

The Parties agree that the Landlord is entitled to $850.00 for rent for the month of May 2018. The Tenant states that the Landlord informed the Tenants that the unit was sold on March 30, 2018. The Tenants state that on April 3, 2018 the Landlord told the Tenants that they had to move out by April 30, 2018.

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 agreement of the Parties I find that the Landlord has substantiated an entitlement to **$850.00**.

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. 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 reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed and that costs for the damage or loss have been incurred or established. As the Landlord has not provided any invoices for the utility costs being claimed I find that the Landlord has not substantiated that the costs claimed were incurred. I therefore dismiss this claim.

Given the Landlord’s inconsistent evidence in relation to offers for a move-out I prefer the Tenant’s evidence and find that the Landlord only made one offer for a move-out inspection.

Although it may be found that the Tenant did leave some damage to the flooring I consider that this damage was aesthetic only. The Landlord provided no supporting evidence of any costs being incurred or the dates of any work being done to the floors. The Landlord claims an amount greater than its own oral evidence of the costs incurred. Overall the Landlord`s evidence was vague and inconsistent. The Tenant’s evidence that no repairs were done is plausible given the Tenant’s preferred evidence that the unit was sold before the end of the

tenancy. For these reasons I find on a balance of probabilities that the Landlord has not substantiated any costs and I dismiss the claim in relation to flooring.

As the Landlord`s claim had some merit I find that the Landlord is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$950.00**. Deducting this amount from the combined security and pet deposit plus zero interest of **$1,700.00** still being held by the Landlord leaves **$750.00** to be returned to the Tenants forthwith.

Conclusion

I Order the Landlord to retain the $950.00 from the security deposit plus interest of $1,700.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **$750.00**. 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 Act.

Dated: November 14, 2018

Residential Tenancy Branch