



Dispute Resolution Services

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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 damages to the unit - Section 67;
2. A Monetary Order for unpaid rent - 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 Tenant were each given full opportunity under oath 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 following are agreed or undisputed facts: The tenancy started on September 1, 2016. The Parties had a fixed term to end June 30, 2018 with the Tenant being required to move out at the end of the tenancy. Rent of \$2,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit and \$100.00 as a pet deposit. The Landlord continues to hold these deposits. The Parties mutually conducted both a move-in and move-out inspection with condition reports completed and copied to the Tenant. The unit was rented with furnishings however the move-in report did not document the state of the furnishings. The Tenant provided her forwarding address on June 30, 2018 at the move-out inspection.

The Parties agree that the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent containing an effective move-out date of June 17, 2018 and that the Tenant moved out on that date. The Parties agree that only \$200.00 for rent was paid for June 2018. The Landlord claims \$2,000.00 in unpaid rent for June 2017. The Tenant states that they did not pay the rent for June 2017 as the Landlord should have given a month's free rent in compensation for having taken over and moved into the unit. The Tenant states that the Landlord did not serve the Tenant with a 2 month notice to end tenancy for landlord's use. The Parties agree that the keys were returned to the Landlord on June 17, 2018.

The Landlord states that the Tenant left a bedframe, mattress and two sofas damaged. The Landlord claims an estimated cost of \$1,696.89 for the replacement of the sofas and this cost includes the claim of \$24.00 for the disposal of the damaged sofas. The Landlord did not replace the sofas and does not know the age of the sofa as they were included with the purchase price of the unit. The Landlord purchased the unit in 2016. The Landlord claims an estimated \$100.00 for repair to the bed frame that was left with scratches. The Landlord has not repaired the frame that was included with the purchase of the property. The Landlord claims an estimated cost of \$400.00 to replace the mattress and \$40.00 for the disposal of the damaged mattress. The Landlord did not provide a receipt for the disposal cost that was done separately from the disposal of the sofas. The Landlord has not replaced the mattress that was included with the purchase of the property. The Landlord believes that the sofas and bed frame were about 5 years old.

The Tenant agrees that the sofas were left with damage and states that there were some scratches and pulls on the sofa at move-in that was not recorded on the move-in inspection that was done with the previous landlord. The Tenant states that the bed frame may have been damaged prior to the onset of the tenancy as well as the Tenant did not notice anything during the tenancy. The Tenant states that she does not know how the bedframe was damaged. The Tenant states that the mattress had a mattress cover during the tenancy, that the Tenant left the mattress cleaned and that any damage was not beyond reasonable wear and tear.

The Landlord states that the Tenant left a window sill damaged, a wall damaged and a bedroom door damaged. The Landlord claims an estimated repair cost of \$200.00 for the window sill,

\$150.00 for the wall repair and \$100.00 for the door. The Landlord has not done any of the repairs to the sill and the door has not been repaired or replaced. The Landlord states that the door is 20 years old. The Landlord does not know when the unit was last painted. The Landlord states that he did the wall painting himself over 4 hours and that the paint supplies for the entire unit was \$250.00 so the Landlord estimated that the supplies for the Tenant's portion would be \$150.00. The Landlord provided no receipt for the cost of the paint supplies. The Landlord states that the Tenant left a fridge shelf damages and claims the replacement cost of \$92.06. The Landlord confirms that the shelf has not been replaced and the costs claimed have not been incurred. The Tenant does not dispute that the window sill was left damaged but believes that the costs being claimed for its repair is excessive. The Tenant states that the wall damage was only wear and tear over the length of the tenancy.

The Landlord states that the Tenant left the unit with water damage and claims the insurance deductible of \$500.00. The Landlord states that this was paid on October 17, 2018 and that the receipt was not provided as it was too late for the hearing. The Landlord provides a letter from the insurance company setting out the cost of the deductible. The Landlord states that the Tenant informed the Landlord by email on June 17, 2018 that a leak was discovered from the kitchen sink leading to the garage below. The Landlord states that the leak was inspected on that date and that the leak was likely caused by a loose faucet. The Landlord states that the faucet was tightened by the Landlord at move-out on June 30, 2018. The Tenant states that she did nothing to cause the leak that was only noticed when the Tenant was moving out. The Tenant argues that she is not responsible for the damage or costs claimed.

The Landlord states that the Tenant left the unit completely unclean and claims the cleaning costs of \$400.00. The Landlord states that he and his wife did the cleaning to their standards over 16 hours. The Landlord states that the self-cleaning oven looked like it could have been cleaned but that they were not satisfied with the level of cleaning and did it again. The Landlord provides photos of the unit at move-out and states that the unit was covered with pet hair and grime. The Tenant states that the unit was cleaned, including window sills, floors and bathrooms except for a few minor misses.

Analysis

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. Rent is payable until a tenancy ends. As the Landlord did not end the tenancy with a two month notice for landlord's use I find that the Tenant is not entitled to the compensation of one month's rent. Based on the undisputed evidence that no rent was paid for June 2018, that the Landlord ended the tenancy for unpaid rent, and that the Tenant complied with the notice to end tenancy by moving out of the unit on the effective date, I find that the Landlord has substantiated unpaid rent to the date that the Tenant vacated the unit. The Landlord is therefore entitled to **\$1,246.61** in rent for the period June 1 to 17, 2018 inclusive, based on a per diem rent of \$73.33 (\$2,200.00/30 days = 73.33). Deducting the **\$200.00** paid toward this rental amount leaves **\$1,046.61** owed to the Landlord.

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 the damage or loss claimed was caused by the actions or neglect of the responding party, 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.

Given the uncertainty of the age of the sofa, bedframe and mattress and considering that there is no record of the condition of these furnishings at move-in I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused damage representing a loss equivalent to the replacement costs being claimed for the sofas and mattress. Further the Landlord has provided no evidence of having incurred any costs for the repair or replacement of the bedframe and fridge shelf. For these reasons I find that the Landlord has not substantiated that the Landlord incurred the costs claimed in relation to the sofa, bedframe, mattress or shelf and I dismiss these claims.

Policy Guideline #40 provides that the useful life of a door is 20 years and the useful life of indoor paint is 4 years. Given the evidence that the door was 20 years old I find that there was no longer any useful life left to the door and therefore no value lost. I also consider that there is

no evidence that the Landlord incurred any costs to replace or repair the door. Given the lack of evidence of the age of the paint on the wall and considering that the photos appear to show older paint, I find on a balance of probabilities that the paint on the walls had no value left and therefor no loss sustained. For these reasons I find that the Landlord has not substantiated the costs claimed for the door and the painting of the unit and I dismiss these claims. As the Tenant has not disputed the damage to the window sill but as the Landlord has not provided any evidence of repair costs I find that the Landlord has only substantiated a nominal amount of **\$50.00** for this damage.

As the Landlord has not provided any evidence that the Tenant caused the leak in the unit or that the Tenant knew about a leak before reporting it to the Landlord and considering that the Landlord did nothing to repair the leak until a couple of weeks from when it was reported I find that the Landlord has not substantiated that the Tenant caused the damage to the unit or that the Landlord acted sufficiently to repair the leak that caused the damage. I therefore dismiss the claim for reimbursement of the Landlord's insurance deductible.

Given the photos I find on a balance of probabilities that the Tenant did not leave the unit reasonably clean. However given the Tenant's evidence of cleaning and the Landlord's evidence of the oven having been cleaned I do accept that the Tenant did complete some cleaning. For these reasons and given the Landlord's evidence of cleaning to their standard I find on a balance of probabilities that the Landlord has claimed an excessive amount based on a higher standard than required under the Act. I find therefore that the Landlord is only entitled to a reasonable amount of **\$200.00** for cleaning to a reasonable standard.

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 **\$1,396.61**. Deducting the combined security and pet deposit plus zero interest of **\$1,100.00** from this entitlement leaves **\$296.61** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$1,100.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the

remaining amount of **\$296.61**. 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 19, 2018

Residential Tenancy Branch