



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application dated November 6, 2018 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 damage to the unit - Section 67; 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. The Landlord confirms that on February 14, 2019 it amended its application to withdraw a claim for \$240.00 and adds two claims for \$500.00 and \$651.84. The Tenant confirms receiving a copy of the amendment and no objections were made.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on February 15, 2018. Rent of \$2,200.00 was payable on the first day of the month. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. On October 10, 2018 the Parties signed a mutual agreement to end the tenancy on November 1, 2018. The Tenants

moved out on October 31, 2018 and completed a move-out inspection the following day. The Parties conducted both the move-in and move-out inspection with condition reports for each completed and copied to the Tenants. The Tenants provided their forwarding address on the move out report dated November 1, 2018.

The following sets out the remaining relevant oral evidence provided by each of the Parties:

The Landlord states that the Tenants left the wood flooring damaged by a leaking dehumidifier. The Landlord states that the neighbour below noticed a leak from the Tenants' unit on August 23, 2018 and that as the neighbour had been left with a key to the unit by the Landlord and as nobody answered the Tenants' door after loud banging, the neighbour entered the unit. The Landlord states that she assumed that the leak was an accident and has no evidence of the Tenants having causing the leak either by act or negligence. The Landlord states that although only the flooring in the living room and dining room was damaged, the flooring was also replaced in the den and master bedroom floor in order to have the same flooring throughout the unit. The Landlord states that her insurance was only up to a maximum coverage of \$5,000.00 and that the cost to replace the entire flooring was \$7,191.07. The Landlord states that it had a deductible of \$500.00 but does not know how the deductible was calculated or deducted and that the insurance company paid the Landlord \$5,000.00 for the claim. The Landlord claims \$2,191.07 for the costs of all the flooring over the insurance payment and \$500.00 for the deductible.

The Tenants dispute the flooring costs claimed. The Tenants state that the dehumidifier only leaked on the day it was reported to the Landlord. The Tenant states that she was home when the neighbour entered the unit and that nobody knocked on the door in advance of that entry. The Tenants ask why the Landlord should be entitled to costs for flooring that was not damaged by the leak. The Tenants state that the damage covered

only 335 square feet but the Landlord is claiming for 656 square feet of flooring. The Tenants do not dispute the Landlord's claim for the \$500.00 deductible.

The Landlord states that at the move-out inspection the electric fireplace appeared to be working as the flame illuminators were on. The Landlord states that in the middle of November 2018 it was discovered that although the illuminator switch worked, the heat switch on the fireplace did not work. The Landlord states that since the fireplace had been serviced in January 2018 the Landlord did not attempt any repairs, purchased a new replacement fireplace, and moved into the unit at the end of November 2018. The Landlord claims \$651.84 as the cost of the replacement fireplace. The Landlord states that the fireplace was original to the 14 year old building. The Landlord states that had the Tenants informed the Landlord during the tenancy that the fireplace was not working she would have repaired the fireplace and would not have asked the Tenants to repair it. The Tenants state that they did not damage the fireplace and that all of it was working at move-out.

The Landlord states that as a result of the damage she felt that she needed to end the tenancy. The Landlord confirms again that the tenancy was ended in writing by mutual agreement with the Tenants. The Landlord claims unpaid rent for the period November 1, 2018 to February 28, 2019, inclusive in the amount of \$8,500.00.

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 37(2)(a) provides that when a tenant vacates a rental unit, the tenant must leave the rental unit, inter alia, undamaged except for reasonable wear and tear. Given the Landlord's evidence that only the living

and dining room floors were damaged and considering that the Landlord is claiming costs for an additional and almost equivalent area that the Landlord agrees was not damaged by the Tenants, I find that the Landlord has failed to take reasonable steps to minimize the costs being claimed and has not substantiated the costs being claimed. I therefore dismiss the claim for flooring costs. As the Tenants have not disputed the cost of the deductible I find that the Landlord is only entitled to the **\$500.00** claimed.

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 inspection does not indicate any damage to the fireplace and the Tenants deny leaving the fireplace damaged. There is no evidence that the Tenants caused the fireplace to be damaged other than the Landlord's assertion that they did. I consider that the Landlord's evidence of not holding the Tenants responsible for repairing the fireplace if they had reported it to the Landlord during the tenancy to contradict this assertion. The Landlord did nothing to attempt to repair the fireplace. I consider that this is a failure of the Landlord to take reasonable steps to minimize or mitigate the costs being claimed. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage to the fireplace or that the Landlord is entitled to the costs of the replacement fireplace and I dismiss this claim.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. When a tenancy ends rent is no longer payable. It is undisputed that the Parties signed a mutual agreement to end the tenancy on November 1, 2018 and that the Tenants moved out by that date. For these reasons I find that the Landlord is not entitled to unpaid rent past November 1, 2018. The Landlord has also not substantiated that the Tenants caused any loss of rental income as the Landlord moved into the unit within the same month. I therefore dismiss the claim for any rental monies.

Deducting the Landlord's entitlement of **\$500.00** from the Tenants' security deposit of **\$1,100.00** plus zero interest leaves **\$600.00** owed to the Tenants. As the Landlord's application met with limited success and as the Landlord's entitlement is less than what is owed to the Tenants, I dismiss the claim for recovery of the filing fee.

Conclusion

I Order the Landlord to retain \$500.00 from the security deposit plus interest of \$1,100.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$600.00**. 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: March 13, 2019

Residential Tenancy Branch