



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, 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 damage to the unit - Section 67
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain all or part of the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlords 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 facts: The tenancy, under written agreement started on February 1, 2018 for a fixed term to end January 31, 2019. Rent of \$2,045.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,022.50 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection with completed reports for each copied to the Tenant. The Tenant failed to pay rent for November 2018 and on November 2, 2018 the

Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant did not pay the rent.

The Tenant states that the Landlord was aware that the Tenant was not at the unit at the time the Notice was posted. The Tenant states that in mid-October 2018 a break in occurred at the unit and that only a temporary fix was made to the door. The Tenant states that after the break-in the Tenant no longer stayed at the unit. The Tenant states that she informed the Landlord on November 1, 2018 that she was not staying at the unit because of the door not being fixed. The Tenant states that she had moved some clothing and other valuables, such as jewellery, out of the unit on November 2 and that the move out was complete on November 5, 2018 after which the move-out inspection was set for November 15, 2018. The Tenant states that she saw the Notice on November 4, 2018.

The Landlord claims unpaid rent of \$2,045.00 for November 2018 and \$1,022.50 due to the Tenant breaking the fixed term. The Landlord confirms that there is no section or provision in the written tenancy agreement for the Tenant to pay any amount of money if the Tenant ends the tenancy ends before the fixed term date. The Landlord states that the unit was not able to be rented for the remaining part of November 2018 due to the damage left. The Landlord states that they were waiting for the strata to repair the door and that there was no hurry to complete the other repairs. The Landlord states that the repairs were completed on or about March 1, 2019 and that the unit was listed for sale in early March 2019. The Landlord states that they did not seek to rent the unit after the tenancy ended and that the unit has been vacant since then.

The Landlord states that the Tenants breached the strata rules and incurred fines. The Landlord claims an estimated \$800.00 in compensation for those files. The Landlord confirms that nothing in the tenancy agreement requires the Tenant to pay any strata fines and that no reference to the Tenant's obligations to adhere to the strata rules, such as the attachment of form K, was provided with the tenancy agreement.

The Landlord states that the Tenant failed to leave the unit with any cleaning and claims the estimated amount of \$550.00. The Landlord states that it appeared that the Tenant held a large party at the unit prior to moving out leaving stains, marks and debris. The Landlord states that a family friend cleaned the unit after the end of the tenancy and that they paid this person \$275.00. The Landlord is not aware of the hours or hourly rate being paid for that amount. No paid invoice was provided as evidence. The Landlord states that the carpets were left stained but were not removed. The Tenant states that she did arrange for cleaners for November 14, 2018 but that the fob had been deactivated on either November 14 or 15, 2018. The Tenant states that the Landlord told her boyfriend at the move-out that they could leave their junk. The Landlord agrees that the fob was deactivated on either November 14 or 15, 2018 after the Tenant informed them that they were finished with their move-out. The Landlord denies agreeing for any garbage to be left by the Tenant.

The Landlord states that the Tenant left large dents on almost all of the walls of the unit. The Landlord states that no drywall was replaced and that the dents were filled. The Landlord claims an estimated cost of \$650.00 for the drywall repair and \$850.00 for the costs of painting. The Landlord did not provide any receipt for the costs claimed. The Tenant agrees that the photos indicate dents on the walls and believes that perhaps the movers caused this damage. The Tenant states that she did not intentionally leave any damage to the unit.

The Landlord states that the Tenant left the laminate floors with scratches and gouges. The Landlord provides a copy of the move-out inspection that notes 4 areas of damage. The Landlord claims an estimated amount of \$1,200.00 for the cost of replacement or the touch-up of planks. The Landlord states that the flooring was not replaced and that the spots on the laminate were only filled. The Tenant states that no dents were left on the flooring, that she never noticed any dents on the flooring, that this damage is not

noted on the move-out inspection and that the Tenant did nothing herself to cause that damage.

The Landlord states that the Tenant left chips in the kitchen quartz counter top. The Landlord claims an estimated replacement cost of \$875.00. The Landlord states that the countertop was not replaced and that the chips were filled. No invoice was provided for the cost of filling the counter top. The Tenant states that no chips were left on the countertop and that the photo of a chip looks zoomed in. The Tenant states that she would have noticed a chip or gouge had it been there.

Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. It is undisputed that November 2018 rent was not paid as required under the tenancy agreement. As a result and despite any failure by the Landlord to make repairs to the door, I find that the Landlord has substantiated an entitlement to **\$2,045.00** in unpaid rent. The Tenant is at liberty, subject to any limitation dates, to make a claim for any loss of use of the unit due to any act or negligence of the Landlord in relation to the security of the unit.

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. As there is no provision in the tenancy agreement for the payment of any fees by the Tenant if the Tenant ends the tenancy early, I find that the Landlord has not substantiated that the Tenant breached any term of the tenancy agreement. Further the Landlord did not seek to rent the unit out again and I find therefore the Landlord did not suffer any rental income losses or take any

steps to mitigate any rental income losses. As a result I dismiss the claim for \$1,022.50 for breaking the fixed term.

As there is nothing in the tenancy agreement in relation to strata rules or fines, I find that the Landlord has not substantiated that the Tenant breached the tenancy agreement. Nothing in the Act provides for strata fines or fees. As a result I dismiss the claim for strata fines.

Based on the undisputed evidence that the Tenant did not clean the unit, that the Tenant provided no supporting evidence of having arranged for a cleaner and that the Tenant did not dispute the Landlord's evidence that the Tenant could have made arrangement with concierge at the building to access the unit for cleaning, I find on a balance of probabilities that the Landlord has substantiated that the Tenant breached the Act. However as the Landlord provided no invoice or receipt for the cleaning costs I find that the Landlord has only substantiated a nominal amount of **\$100.00** for the Tenant's breach.

Given the photos I find on a balance of probabilities that the Landlord has substantiated that the Tenant left the unit with dents on the walls. I also consider the damage to be beyond wear and tear. However the Landlord provided no receipts or invoices for the cost of either the patching or painting work. As a result I find that the Landlord has only substantiated a nominal amount of **\$100.00** for the Tenant's breach in leaving damage to the walls beyond wear and tear.

As the damage to the floors and the counter top were only filled, as the costs of replacement flooring could not reasonably be equal to the cost of touch-ups as set out in the estimate, as there was no evidence of any re-sanding or re-polishing of the countertops, and as the Landlord provided no evidence of any costs for any labour to repair the flooring and counter top, I find that even if the Tenant did leave damage the

Landlord has not substantiated the costs claimed. I dismiss the claim for \$1,200.00 and \$875.00.

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 **\$2,345.00**. Deducting the security deposit plus zero interest leaves **\$1,322.50** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,022.50.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,322.50**. 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 25, 2019

Residential Tenancy Branch