



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM Ltd as Agent for Brookmere Gardens
Inc and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, 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 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 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 facts: The tenancy under written agreement started on August 1, 2016. Section 43 of the tenancy agreement provides that smoking was not allowed in the unit. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit, \$500.00 as a pet deposit and \$50.00 as a fob deposit. Rent of \$1,078.00 was payable on the first day of each month. The Parties mutually conducted a move-in inspection on August 3, 2016. The Tenant had a 3rd party attend the move-out inspection on behalf of the Tenant. This person attended the move-out inspection with

the Landlord on February 26, 2019 and signed agreement to the state of the unit as indicated on the move-out report.

The Landlord states that the Tenant was given the yellow copy of the 3 part move-out report from. The Tenant states that she was not given a copy of the move-in report.

The Landlord states that the Tenant moved out of the unit and returned the keys on February 26, 2019. The Landlord states that the Tenant provided its forwarding address by text on February 27, 2019. The Landlord provides a copy of this text. The Tenant states that she moved out of the unit on February 21, 2019, left the fob on the counter and gave the 3rd party the keys to return to the Landlord. The Landlord states that the Tenant did send a text on February 21, 2019 informing the Landlord that movers were booked and that the Tenant would be vacated by February 23 or 24. The Landlord states that the Tenant send another text on February 25, 2019 informing the Landlord that she would be moved by the end of that day.

The Landlord states that the Tenant left the walls and cupboards in the unit stained from cigarette tar and smoke. The Landlord states that the walls had to be both washed and painted to recover from the stains and smells. The Landlord states that the unit was last painted in July 2016. The Landlord claims \$2,210.00 and provides an invoice. The Landlord does not know how much of this cost was allocated to the painting.

The Tenant agrees that there was smoke on the walls but believed that the walls should have only required washing. The Tenant disputes that paint was required.

The Tenant does not dispute the claim of **\$210.00** for the removal of items left in the unit.

The Landlord states that unit was in such a state of disrepair that the unit could not be rented for March 1, 2019. The Landlord states that after the walls were washed the unit

still contained odors requiring both a sealer and two coats of paint. The Landlord states that the painters started as soon as they were available on March 1, 2019 and completed the job on March 8, 2019. The Landlord estimates that the wall washing took a day, the sealer took a day and the painting took two days. The Landlord states that the unit could not have been painted with tenants in place as it would have taken longer and was not practical. The Landlord states that the cleaning was done by the 3rd party who was also the Landlord's employee after the painting was done and that it took this person 20 hours of cleaning. The Landlord states that the unit could not be cleaned immediately after the Tenant vacated the unit due to the junk removal that occurred on February 27, 2019.

The Tenant states that she does not believe that it took as long to paint the unit as stated by the Landlord and that the painting should have been done within two days. The Tenant states that the 3rd party was told to clean the unit immediately and before February 28, 2019. The Tenant states that she saw another person, a former friend, cleaning the appliances after she moved out. The Landlord states that this other person was cleaning in March and that the Landlord paid this person to clean.

The Landlord states that the unit was advertised online in February 2019 for rent of \$1,250.00 and being available March 1, 2019. The Landlord states that the unit was shown once in February 2019 but because the Tenant was smoking in the unit the Landlord knew that it could not be shown again until after repairs. The Landlord states that the unit was also advertised for a March 15, 2019 but as this was not a common time of the month for renters the Landlord was only able to rent the unit for April 1, 2019. The Landlord states that the rent was increased for the next tenancy in order to be in line with market prices. The Landlord provides photos of the unit at both move-in and move-out.

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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. 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.

Based on the agreement of the Tenant I find that the Landlord has substantiated an entitlement to **\$210.00** for the removal of items left in the unit.

Given the Landlord's evidence of the description of the form and colored copy of the move-in report I find on a balance of probabilities that the Tenant was given a copy of the move-in report. Given the Landlord's text evidence I find on a balance of probabilities that the Tenant moved out of the unit on February 26, 2019. Given the Tenant's evidence that the Tenant assigned her responsibility to the 3rd party to attend the move-out inspection, given this person's agreement to the state of the unit at move-out and considering the Landlord's photo evidence, I find that the Tenant left the unit with damages beyond reasonable wear and tear.

Policy Guideline #40 provides that the life of indoor paint is 4 years. Based on undisputed evidence that the Tenant left the unit with smoke stains and odor and given the Landlord's evidence of the extent of work required to rid the unit from the stains and odor I find that the Landlord has substantiated on a balance of probabilities that the walls required both washing and painting. However as the wall paint was approximately

3 years old by the end of the tenancy I find that there was only one year left to its life for which the Tenant is responsible. As the invoice does not set out any separate hourly costs for the washing and painting, and as there is no evidence of a different hourly rate for either task, I can only base the costs of washing the walls on the Landlord's estimate that it took 1 day to wash and 3 days to prime and paint the unit. I find on a balance of probabilities therefore that the washing portion of the total bill for which the Tenant is liable is **\$552.50** ($\$2,210.00/4 = \552.50). Given that the age of the paint is three years and that its useful life is four years, I find that the Tenant is only responsible for the last year or $\frac{1}{4}$ of the remaining costs to paint and prime in the amount of **\$414.38** ($\$1,657.50/4$).

As the Tenant was out of the unit by February 26, 2019 and based on the Landlord's undisputed evidence that the repairs to the unit started as soon as the company was able and given the Landlord's evidence of the completion of the painting on March 8, 2019 I find on a balance of probabilities that the Landlord has substantiated that the Tenant's failure to leave the unit without damage caused the loss of rental income for 8 days in the amount of **\$278.16**. I base this amount on a per diem of \$34.77 ($\$1,078.00/31 = 34.77$; $\$34.77 \times 8 = 278.16$).

As the Tenant moved out of the unit on February 26, 2019 I consider that the cleaning of the unit could have reasonably been completed by the time the painting was completed. As the Tenant's cleaner was also an employee of the Landlord and given the Tenant's evidence that the cleaner was to have cleaned the unit immediately, I consider that the cleaning was delayed at the instruction of the Landlord. Further, as the Landlord significantly increased the rent being sought for the next tenancy I find that the Landlord failed to take reasonable steps to mitigate the loss of rental income for the remainder of the month and I dismiss the remainder of the lost rental income claimed for March 2019.

As the Landlord's claim had merit, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,555.04**. As the Landlord still holds the security deposit plus zero interest of \$1,000.00 plus \$50.00 for the fob deposit, I order the Landlord to retain this total amount of **\$1,050.00** leaving **\$505.04** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the deposits of **\$1,050.00** in partial satisfaction of the claims and I grant the Landlord an order under Section 67 of the Act for remaining **\$505.04**. 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: May 17, 2019

Residential Tenancy Branch