



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CA Realty Ltd. dba Creighton & Associates
Realty and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on March 13, 2019 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on June 13, 2011 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord 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?

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on October 15, 2017 and ended on February 28, 2019. Rent of \$2,125.00 was initially payable on the first day of each month and as of November 1, 2018 the rent was increased to \$2,210.00. At the outset of the tenancy the Landlord collected \$1,062.50 as a security deposit. The Parties mutually conducted a move-in inspection on October 12, 2017 with an inspection report completed and copied to the Tenants. No move-out inspection was done.

The Landlord states that the Tenants provided their forwarding address at some date after the tenancy but does not recall when. The Tenants states that their forwarding address was provided either before or shortly after the end of the tenancy. The Landlord states that offers for a move-out inspection was made but the Landlord has no idea when and for what times those offers were made. The Tenant states that no offers for a move-in inspection were given to them. The Tenants claim return of double the security deposit.

The Landlord claims \$210.00 for the costs of carpet cleaning and the Tenants do not dispute this claim. The Landlord withdraws the claims for a stove part as the Landlord has no receipt for any costs for the replacement. The Landlord withdraws the claims for costs to replace a skylight as the Landlord does not have evidence of its replacement or any invoice supporting that the costs claimed were incurred. The Tenant states that the skylight was not damaged by the Tenants and that it was discovered around the time of a flood that occurred from that area of the roof.

The Landlord states that the Tenants left a piece of the moulding on the kitchen laminate flooring damaged. The Landlord states that the flooring was less than 5 years old. The Landlord claims \$50.00 and provides the invoice for the costs claimed. The Tenant states that the kitchen flooring was ceramic tile and that the Landlord repaired the damage with tiles that were already on hand with the owner. The Tenant states that

the damage was only reasonable wear and tear. The Landlord clarifies that the damage was to the moulding in the doorway between the kitchen and dining room. The Landlord provides photos of that area.

The Landlord states that the Tenants let the unit unclean requiring cleaning of the stove and washing the marks off the walls. The Landlord claims \$173.25 for the cost of 3 hours of labour at \$55.00 per hour and provides an invoice for this amount. The Landlord provides photos of the stove, oven and walls. The Landlord confirms that no details of what items were cleaned are provided in the invoice and that there is no move-out report indicating what items need cleaning. The Tenant states that the unit was cleaned thoroughly at move-out.

The Landlord states that the unit required painting and repairs due to large screw holes at the entrance, wall drawings, and smaller marks and nicks on the living room/dining room walls and stairway walls. The Landlord states that the unit was last painted in August 2017 and that much of the damage is reasonable wear and tear. The Landlord claims \$850.50 and provides a detailed invoice.

The Tenant states that the Landlord is making overlapping claims in relation to both washing and painting walls with marks. The Tenant agrees that one wall was marked with drawings and that the Tenant wanted to clean the wall but was not given the opportunity to do so. The Tenant states that except for the one wall all the remaining marks were wear and tear. The Tenant states that a flood occurred during the tenancy and that moving equipment was taken through the entrance and stair walls likely causing the nicks and small marks. The Tenant states that at the end of the tenancy the Parties only talked about the need for the carpets to be cleaned.

The Tenant states that in the spring of 2018 a flood occurred. The Tenant states that it was noticed and reported on the same day, April 8, 2018. The Tenant states that the room was dried out in May or June 2018 and that final repairs were not made until

August 2018. The Tenant states that one bedroom was affected and that they lost use of this room for approximately four months between April and July 2018. The Tenant states that they suffered primarily an inconvenience from the presence of workers and fans but nothing significant. The Tenants claim compensation of \$2,000.00. The Landlord states that there was no loss of use of the bedroom, that the Tenants did not report any loss of use of the bedroom and that there was only a one-time leak caused by a backed-up gutter that was stopped the day after it was reported. The Landlord states that the dryer was removed about 15 days after the leak was reported. The Tenant states that although the Landlord responded quickly there was obvious mold and that the contractor informed the Tenants that the mold was pre-existing. The Landlord agrees that the Tenants are entitled to \$200.00 for the inconvenience only. The Landlord confirms that this amount was indicated as a credit to the Tenants in the Landlord's monetary order worksheet.

Analysis

Section 35(2) and (3) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for an inspection of the unit at the end of the tenancy and that the landlord must complete a condition inspection report in accordance with the regulations. Section 36(2)(a) of the Act provides that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make at least two opportunities for an inspection at the end of the tenancy. As the Landlord did not provide evidence of dates or times of offers for a move-out inspection and as the Tenant states that no offer for a move-out inspection was made, I find on a balance of probabilities that the Landlord did not make two offers for a move-out inspection. As a result, I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out and that the Landlord could not retain the security deposit pending an application seeking damages to the unit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Despite the Landlord making a claim for damages to the unit within 15 days of the end of the tenancy, as the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-out, as the Landlord received the Tenants' forwarding address and as the Landlord did not return the security deposit to the Tenants I find that the Tenants are now entitled to return of double the \$1,062.50 security deposit plus zero interest in the total amount of **\$2,125.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must, inter alia, leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. 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. As the Tenant did not dispute the Landlord's claim for carpet cleaning costs I find that the Landlord has substantiated an entitlement to its costs claimed of **\$210.00**. As the Landlord has withdrawn its claims in relation to a stove part and the skylight based on a lack of evidence I dismiss those claims.

Given the photos of the area between the kitchen and dining room I find on a balance of probabilities that the Tenants left the moulding in this area damaged beyond wear and tear. Given the invoice showing this repair cost incurred I find on a balance of probabilities that the Landlord is entitled to the claimed amount of **\$50.00**. Given the photos of walls with large holes and screws remaining I find that the Tenants left these walls with damage beyond wear and tear. Given the invoice setting out the amounts of \$80.00 and \$35.00 for the repair of these walls I find that the Landlord has substantiated an entitlement to the costs of **\$115.00**. Given the photos of walls with a large number of nicks and marks but considering the Landlord's evidence that much of the damage was reasonable wear and tear and given the Tenants' evidence that beyond the wall with the writing the damage was only wear and tear, I find that the Landlord has only substantiated a nominal amount of **\$100.00** for cost of painting of the wall with writing.

Given the photos of the stove and oven I find on a balance of probabilities that the Tenants did not leave this item reasonably clean. Although the Tenant argues that the Landlord is making overlapping claims in relation to washing the wall with marks and painting the wall with marks, given the photo of the wall with writing it appears that washing was attempted without full success. As there was no evidence that the hourly amount being claimed on the provided cleaning invoice was excessive and as I consider that the time to clean these items is reasonable I find that the Landlord has substantiated cleaning costs of **\$173.25**.

Given the undisputed evidence that the Landlord repaired the leak within a day of it being reported and that a drying fan was in place for 15 days I find on a balance of probabilities that the Landlord was not negligent in responding to the leak. Given the Landlord's ceiling photos and the Tenant's evidence of the presence of mold I find on a balance of probabilities that there was mold in the unit. However as there is no evidence that the mold was dangerous to health I find that the Tenant has not substantiated a loss of use of the bedroom due to the presence of mold beyond the

initial repair period. For these reasons I find that the Tenants have not substantiated the amount of loss claimed in relation to the leak and presence of mold. As the Landlord has agreed that the Tenants experienced inconvenience and based on the Landlord's agreement to compensate the Tenants for this inconvenience I find that the Tenants have substantiated compensation of **\$200.00**. As each Party has been somewhat successful with their claims I decline to find either Party entitled to recovery of their filing fees.

Deducting the Landlord's total entitlement of **\$438.25** from the Tenants' total entitlement of **\$2,325.00** leaves **\$1,886.75** owed to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,886.75**. 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: June 19, 2019

Residential Tenancy Branch