



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damage to the unit - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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: although a written tenancy agreement was prepared and sent to the Tenants, it was not signed by the Tenants however the Tenants agreed both by email at the time and at the hearing with all the terms of the prepared tenancy agreement. The tenancy started on October 1, 2107 for a fixed term to end September 30, 2019. The Tenants moved out February 27, 2019 and returned the keys to the Landlord on February 28, 2019. Rent of \$1,050.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection with completed reports for each copied to the Tenants. The Tenants provided their forwarding address to the Landlord on February 28, 2019.

The Landlord states that the Tenants did not provide any notice to end the tenancy. The Landlord states that after the tenancy ended the unit was advertised online with monthly rent of \$1,450.00 being sought. The Landlord states that the unit was filled for April 15, 2019 with rent of \$1,500.00 and for three occupants. The Landlord claims \$1,050.00 for the loss of rental income.

The Landlord states that the tenancy agreement contains a clause requiring the Tenants to pay \$2,100.00 if they end the tenancy before the end of the fixed term. The Landlord states that while this clause may conflict with the Act it is not really a penalty.

The Landlord states that the mother of one of the Tenants lived in the unit for five and a half months without the Landlord's consent. The Landlord states that section 5 of the tenancy agreement requires the Tenants to obtain the Landlord's consent before another person could occupy the unit. The Landlord confirms that the tenancy agreement does not provide for an additional rental amount of another person occupies the unit. The Landlord claims \$850.00. The Landlord states that the extra occupant caused an increased cost of utilities and the Landlord confirms that no supporting evidence of such increased costs have been provided to support this claim. The Tenants state that the mother only stayed for a few days each week or about 14 days per month and only when no shelters were available.

The Landlord states that although no blinds are noted as damaged on the move-out report, this item was missed. The Landlord states that the Tenants left blinds damaged and claims \$50.00. No receipt was provided by the Landlord for this cost. The Tenants state no blinds were damaged by the Tenants as noted on the move-out report.

The Landlord states that the west bedroom wall was left with deep scratches from the rubbing of furniture. The Landlord states the repairs were done by the Landlord with their own supplies and materials that were on hand. The Landlord states that it took about 3 or 4 hours to complete the repairs. The Landlord claim \$90.00 for this repair work and states that a professional person would charge between \$40.00 and \$50.00 per hour for the labour. The Tenant states that while they did cause the damage to the wall it was minimal and should not have taken the Landlord more than 15 minutes of actual labour to putty and paint the spot. The Tenant states that the Landlord is seeking an excessive amount and at most should only be

entitled to \$20.00 for the repair. It is noted that neither Party provided supporting evidence of a usual or market cost for the repair. The Landlord argues that even if the amount is excessive the Landlord should be entitled to compensation for the Tenants' breach of the requirement to leave no damage.

The Landlord states that the Tenants caused the sump pump to be damaged to the extent that it required replacement and later another repair. The Landlord states that the Tenants flushed fabric down the toilet and that this caused the pump to stop working all together. The Landlord states that the sump pump operates only for the basement area to remove flushed toilet water and any water that may drain from the water heater. The Landlord states that it is believed the Tenants caused the fabric to be in the sump pump as the night before the problem was discovered the Landlord heard the Tenant vomiting into the toilet and that the fabric removed from the pump the next day smelled like vomit. The Landlord states that there were no previous problems with the pump of about 4 years. The Landlord states that the previous pump had to be replaced due to a previous tenant's child throwing stockings into the toilet. The Landlord states that at the time the stockings were removed the pump replaced. The Landlord states that the average life with proper use of the pump is 20 to 25 years. The Landlord provides photos of the sump pump and claims \$1,260.00 for the cost of replacing the pump and a second repair to the new pump. The Landlord provides two invoices for the costs claimed. It is noted that the second invoice sets out the problems with both repairs. The Tenant states that a second suite is in the basement and that the tenants in this unit could have caused the problem. The Tenant states that they can hear the water and flushing through the walls from the Landlord's unit to the floor and the basin for the pump. The Tenant states that an electric pump will only last for 3 to 7 years and that this can be readily determined online. The Landlord states that the second basement suite was only occupied for a bit both two months before and two months after the pump failure. The Tenant states that they did see the tenants from the other basement unit occasionally during the time of the failure.

The Landlord states that the Tenants failed to leave the unit reasonably clean and while there was some cleaning done it was insufficient. The Landlord claims \$300.00 for cleaning by both Landlord's and that it took them between 4 and 5 hours to complete the cleaning. The Tenant states that the unit was left reasonably clean and that the report only describes dust and dirt. The Tenant states that the floors were washed and only had some footprints on them from when

the Tenants and the Landlords did the move-out inspection. The Tenant states that no appliances were noted as unclean. The Tenant states that the unit is about 400 to 500 square feet with two bedrooms and one bathroom. The Tenant states that it only takes about two to three hours to clean the entire unit. The Tenant states that the Landlord cleaning costs are excessive.

The Landlord states that the Tenants caused the tub to drain slowly and that this was discovered during the move-out inspection. The Landlord states that the Tenants were provided with a strainer to use in the tub but that they did not use it. The Landlord states that the plumber who repaired the drain removed a hairball that the Landlord states was the cause of the slow drain. The Landlord claims \$118.18 for the purchase of a drain opener and the plumbing cost for the removal of the blockage. The Tenant states that they did not cause the tub to drain slowly and that the strainer was a cheap item that was meant for a sink. The Tenant states that perhaps hair slipped through the strainer. The Tenant states that during the tenancy the drainage was sometimes a bit slow but that the day before the move-out inspection was draining fine. The Tenant agrees that the tub drained slowly at the move out inspection. The Tenant states that the Landlord has also modified the tub trap to insert mesh and to support a plug that was modified to fit the strainer. The Landlord states that the strainer was provided at the outset of the tenancy as a preventative measure. The Landlord states that there were no previous issues or problems reported prior to the Tenants occupying the unit.

Analysis

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the undisputed evidence that the tenancy agreement was a fixed term to end September 30, 2019 and that the Tenants moved out of the unit before this end date I find that the Tenants breached both the Act and the tenancy agreement.

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. Although the Tenants breached the Act by ending the tenancy earlier than was allowed, based on the Landlord's evidence that the unit was advertised for a larger amount of rent than what the Tenants were obliged to pay and as the Landlord will now obtain a greater amount of rent to the end of the Tenants' fixed term than the Landlord otherwise would have with the Tenants in place, I find that the Landlord both failed to mitigate the costs being claimed and has not shown any loss caused by the Tenants' early end of the tenancy. I therefore dismiss the claim for lost rental income.

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 costs for the damage or loss have been incurred or established. There is nothing in the tenancy agreement that requires the Tenants to pay any sum of money for an additional occupant and while the Landlord's oral evidence is that there would be an increase in utility costs with the presence of another occupant, the Landlord did not provide any evidence of that the costs being claimed were incurred through the Tenants' utility usage. I therefor dismiss the claim for \$850.00. Although the Landlord's evidence is that the claim for its labour costs to repair the deep scratch on the bedroom wall is significantly less than what a professional would charge, the Tenant's evidence is that the labour should only have been minimal. Considering the photo and description of the work needed to repair the damage and as the Landlord did not provide any evidence of estimated professional costs, I consider that the Landlord is claiming an excessive amount of time for the repair. However, as the damage was left by the Tenants and as I consider the damage as depicted by the photo to be greater than reasonable wear and tear I find that the Landlord has substantiated a nominal amount of **\$50.00** for this damage.

Section 22 of the Act provides that tenancy agreement must not include a term that all or part of the rent payable for the remainder of the period of the tenancy agreement becomes due and payable if a term of the tenancy agreement is breached. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the

regulations. As the tenancy agreement provides that the equivalent of two months' rent to be paid if the Tenants breaches the fixed term date and as this is part of the rent payable for the term of the tenancy, I find that this term is inconsistent with the Act and is therefore unenforceable. I dismiss the claim for \$2,100.00

Section 37(2)(b) 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. 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 move-out condition inspection report does not note any damage to any blind, as the Landlord has not provided any evidence of the replacement costs being claimed and as the Tenants deny that a blind was left damaged I find on a balance of probability that the Landlord has neither substantiated the damage or the costs claimed, and I dismiss this claim.

The move-out condition report notes only one drawer left unclean, an unclean bathroom fan, an unclean toilet base, dust on items and footprints or smudges on the floor. The Tenants provided a photo of the toilet base that I consider shows it to be reasonably clean and I accept that it was left as depicted in the photos. As the remaining move-out report only notes minor cleaning misses I find on a balance of probabilities that the Landlord has greatly exaggerated the time spent on cleaning the unit to a reasonable state. I therefore dismiss the claim for cleaning costs.

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Given the Landlord's oral evidence, the photos of the sump pump and the details for both repairs set out on the plumber's invoice I find on a balance of probabilities that the Tenants acted negligently by allowing fabric to go down the toilet causing the sump pump to fail twice. Although the Tenant argues that another tenant from the other basement suite could have caused the damage I note that this evidence is vague about when that other tenant was present in its unit and I consider the Landlord's evidence that this tenant was not present at the time of the sump problems. As both the Tenant and Landlord gave unsupported evidence of the life of a sump pump but considering that the Tenant's oral

evidence was up to 7 years and based on the Landlord's evidence that the replaced pump was only 4 years old, I consider that the pump's useful life was not expired at the time it required replacement. For the above reasons I find on a balance of probabilities that the Landlord has substantiated that the Tenants negligently caused damage to the sump pump requiring both its replacement and subsequent repair. The Landlord is therefore entitled to the claimed amount of **\$1,260.00**.

Despite the finding that the Tenants caused the sump pump to fail by leaving fabric in the toilet, the undisputed evidence of the use of a sump pump and the modification of the tub drain strongly supports that there are drainage issues from the basement suite that existed prior to the start of the tenancy. For this reason and given the Tenant's evidence of the insufficiency of the drain to catch hair, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the tub to drain slowly and I dismiss the claim for repairs to the tub drain.

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 **\$1,360.00**. Deducting the security deposit plus zero interest of **\$475.00** from the entitlement leaves **\$885.00** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$885.00**. 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: June 26, 2019

Residential Tenancy Branch