



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord made June 26, 2019 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord does not know what claim is being made under “Other”. This claim is therefore dismissed. The Landlord provided a second monetary order worksheet with some claims reduced and some increased. As the total amount claimed on the second worksheet is less than the total that was claimed in the application, the second monetary order worksheet is accepted and used to detail the Landlord’s claims.

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 December 1, 2014 and ended on May 31, 2019. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. At the outset of the tenancy the Parties mutually conducted a move-in inspection with a completed report provided to the Tenant. The tenancy was ended by the Landlord by serving the Tenant with a two month notice to end tenancy for landlord's use. The Notice had an effective date of May 31, 2019. The reason for the Notice was that the Landlord or a close family member of the Landlord is to occupy the unit. The Tenant does not dispute the Landlord's claims of \$25.64 for the cost of replacing the thermostat cover, \$58.72 for disposal costs and \$312.08 for the cost of paint supplies.

The Landlord states that it made offers for a move-out inspection for May 25 and May 27, 2019 at 10:00 a.m. for both dates. The Landlord states that both of these offers were made by email and that the Tenant never replied to either of them. The Landlord states that it attended the unit on both of these dates however nobody answered the door. The Landlord states that on May 30, 2019 it gave a final offer for an inspection on May 31, 2019 for 11:00 a.m. The Landlord states that the Tenant informed it that it was not finished moving out of the unit and would send the Landlord a note when they were done. The Landlord states that as no note came, the Landlord attended the unit around 5:00 or 6:00 p.m. on May 31, 2019. The Landlord states that the Tenant was still in the process of moving out and that the Tenant informed the Landlord that the Tenant would be ready for the inspection on June 1, 2019. The Landlord states that at 10:00 a.m. on June 1, 2019 the Landlord and Tenant both attended the unit however the Tenant the Tenant needed more time, so the Landlord offered to return in an hour. The Landlord states that the Tenant never returned to the unit, so the Landlord completed the inspection and report, providing it to the Tenant with the Landlord's application. The Landlord states that the Tenant had not provided a forwarding address at that time. The Landlord states that about 5 or 6 days later the Tenant informed the Landlord that it has been unable to attend the inspection as the Tenant had been in an accident.

The Tenant states that it does not recall any offers to inspect the unit prior to the end of the tenancy. The Tenant states that it agreed to meet the Landlord on May 31, 2019 but did not attend the rental unit at that time. The Tenant states that the Landlord did not give the Tenant a final offer for an inspection. The Tenant states that it provided its forwarding address to the Landlord on June 14, 2019.

The Landlord states that they purchased the unit in 2006 and that the carpets in the hallway, living room, entrance and 2 bedrooms were present at the time. The Landlord states that the age of the carpets is unknown. The Landlord states that the Tenant did not clean the carpet at the end of the tenancy and left paint marks, stains and urine smell on the carpet requiring its removal. The Landlord states that the Tenant left the kitchen linoleum damaged. The Landlord confirms that the linoleum was present when the unit was purchased in 2006 and that the Landlord does not know the age of the linoleum. The Landlord states that it replaced the carpet and linoleum with tile and claims \$1,200.68 as the cost of the tiles. The Landlord did not provide an invoice for its labour claim and estimates that out of the total \$4,000.00 being claimed for its labour, \$1,000.00 was for the flooring work.

The Tenant states that while the carpets were not cleaned by the Tenant, there were no paint stains or cat urine on the carpet. The Tenant states that the linoleum was not damaged by the Tenant and that there were signs of wear and tear on the linoleum at move-in.

The Landlord states that the Tenant painted the kitchen cabinets and left the bottom of the cabinets rotten from water damage. The Landlord does not know the age of the cabinets. The Landlord states that neither the Tenant or the upper tenant reported any foods or leaks. The Landlord claims \$1,136.80 for the cost to replace the cabinets. The Landlord did not provide an invoice for its labour and estimates that out of the total \$4,000.00 being claimed for its labour, \$1,000.00 was for the cabinets. The Tenant

states that the cupboards were old and that for this reason the Tenant painted them. The Tenant provides a copy of an assessment of the rental property indicating that the house was built in 1970. The Tenant states that the area under the sink was wet and that plumbing repairs were made in May 2016. The Landlord agrees that this leak was repaired and that no other leak was reported.

The Landlord clarifies that the "locks" claimed in the monetary order worksheet are in relation to door knobs. The Landlord states that the door knobs for both bedrooms were missing at the end of the tenancy. The Landlord claims \$35.10 for the cost to replace the door knobs. The Tenant states that during the tenancy the door knob in the one bedroom was removed as her son had locked himself in the room. The Tenant states that all the door knobs were in place at the end of the tenancy.

The Landlord states that the Tenant removed the upper and lower mailboxes. The Landlord claims \$22.00 for the replacement of both boxes with one box. The Tenant states that her mailbox went missing in May 2019 and that the Tenant did not remove them. The Tenant states that within a few days after the mailbox went missing the Tenant saw a new mailbox at the upper unit. The Tenant states that another few days later there was another mailbox at the front of the yard.

The Landlord states that the Tenant left a garage door panel that was attached to the garage opener mechanism damaged. The Landlord states that although the Tenant had a remote to open the door, the Tenant would open the garage manually. The Landlord does not know the age of the garage door. The Tenant states that the garage door was never properly installed and would not hang properly. The Tenant states that the door was also not always able to be opened with the remote. The Tenant states that the Landlord had it repaired only once during the tenancy.

The Landlord states that the Tenant left a bedroom window broken with a crack along the bottom of the window. The Landlord claims \$245.96 as the cost to replace the

window. The Landlord does not know the age of the window. The Tenant states that the window was broken by a police officer who knocked on it in April 2019.

The Landlord states that the Tenant painted the unit without permission and that the Landlord used its own labour to repaint the unit. The Landlord states that the Tenant also painted the bathroom walls black that it was not able to cover the dark paint with other paint, so the Landlord put ceramic tile on all the walls. The Landlord did not provide an invoice for its labour and estimates that out of the total \$4,000.00 being claimed for its labour, \$1,000.00 was for the labour for painting the unit and \$1,000.00 for tiling the bathroom walls. The Tenant states that the bathroom was painted mauve.

The Landlord provides photos of the unit.

Analysis

Section 35(1) of the Act provides that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

Section 35(2) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 14 of the Regulations provide that the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time. As the Landlord's initial offers to inspect the unit were made without the Tenant's agreement and for before the end of tenancy date while the Tenant still had belongings in the unit I do not consider these offers to be in accordance with the Act. However, as it is undisputed that the Tenant agreed to the inspection on May 31, 2019 and as the Landlord's evidence of two subsequent offers made again for June 1, 2019 holds a ring of truth, I find that the Landlord met its obligations and made two offers for an inspection.

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35 (2) [*2 opportunities for inspection*], and the tenant has not participated on either occasion. Based on the undisputed evidence that the Tenant did not attend the inspections offered for May 31 or June 1, 2019 I find that the Tenant's right to return of the security deposit was extinguished and the Landlord may retain the security deposit plus zero interest of **\$400.00**. This amount will be set off against any entitlement of the Landlord found herein.

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.

As the Tenant does not dispute the Landlord's claims of **\$25.64** for the cost of replacing the thermostat cover, **\$58.72** for disposal costs and **\$312.08** for the cost of paint supplies, I find that the Landlord has substantiated these claims.

Policy Guideline #40 sets out a useful life of carpet at 10 years, the useful life of a garage door and opener at 10 years, the useful life of tile flooring at 10 years, and the useful life of interior paint at 4 years. As there is no useful life set out for linoleum, I take the useful life of the floor tile to be an equivalent. As there is no evidence of the age of the carpet, kitchen linoleum and garage door other than them being present when the unit was purchased in 2006, and considering the Tenant's evidence of the age of the

house and the Landlord's photo of an aged garage door, I find on a balance of probabilities that the carpet, garage door and linoleum were well beyond their useful life and that the damage left by the Tenant could either only be considered wear and tear in the circumstances or that there was no value left in these items and therefore no loss experienced. For this reason, I dismiss the Landlord's claim for replacement and labour costs in relation to the flooring and garage door. Given the Landlord's evidence that the unit was last painted in November 2014 I find that the paint on all the walls no longer had any useful life. I also consider that the Landlord upgraded the bathroom walls by placing tile on them. This upgrade does not meet the Landlord's obligation to mitigate losses from the bathroom paint. I therefore dismiss the Landlord's claim for labour costs in relation to the painting of the unit and placing tile on the bathroom walls to cover the paint.

Policy Guideline #40 sets out a useful life of kitchen cabinets at 25 years. Given the Landlord's lack of evidence of the age of the cabinets and considering the Tenant's evidence of the age of the cabinets and the supported evidence of the house being 44 years old at the onset of the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that there was any life left to the cabinets by the end of the tenancy. I therefore dismiss the claim for the costs to replace the cabinets along with the Landlord's claim for its labour costs.

Policy Guideline #40 sets out a useful life of windows at 15 years. Given the Landlord's evidence that the windows were at least 13 years old at the end of the tenancy, the Tenant's supported evidence that the house was 44 years old at the start of the tenancy, and considering the Tenant's evidence that it cracked when knocked on, I find on a balance of probabilities that the Landlord has not substantiated that the windows had any useful life remaining when it was damaged. I dismiss the claim for the costs to replace the window.

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 attend the move-out inspection and given the inspection report with photos indicating missing door knobs and door hardware from the bedrooms and the missing mailbox, I find on a balance of probabilities that the Landlord has substantiated that the Tenant left these damages. Given the receipts for the replacement and repair costs I find that the Landlord has substantiated its claims to **\$35.10** for the door knobs and **\$22.00** for the mailbox.

As the Landlord's claims have met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$553.54**. Setting off the security deposit plus zero interest of **\$400.00** leaves **\$153.54** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$153.54**. 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: October 10, 2019

Residential Tenancy Branch