



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application made September 12, 2019 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 damages to the unit - 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.

Preliminary Matter

The Landlord states that at the time of making the application it did not include a claim for rent for October 2019 as it did not know that it would not have new tenants for this month. The Landlord states that it also was unable to upload the estimates for the claimed damages to the Residential Tenancy Branch (the “RTB”). The Landlord asks for an adjournment to make an amendment to its application and to provide additional evidence. The Tenant states that this matter has taken too long to resolve, that the Tenant had to lose work income to attend this hearing and that the Landlord has sufficient time in advance of the hearing to make an amendment and to upload its evidence.

Rule 4.2 of the RTB Rules of Procedure provides that an amendment may be made at the hearing in circumstances that can be reasonably anticipated such as when the amount of rent owing continued to increase since the application was made. After a tenancy ends no rents are payable. As the tenancy ended on September 1 or 2, 2019 the Landlord's claim for October 2019 rent can only be for lost rental income. This is not a circumstance that can be reasonably anticipated such as unpaid rent accruing while a unit is being occupied. I therefor decline an adjournment for this purpose.

Rule 3.11 of the RTB Rules of Procedure provides that evidence must be served and submitted as soon as possible. Rule 3.14 of the RTB Rules of Procedure provides that documentary evidence that is intended to be relied on at the hearing must be received the other party and the RTB no less than 14 days before the hearing. While the Landlord's evidence is that it had problems uploading its evidence the Landlord did not provide any evidence that further tries were attempted, and I note that the Landlord had several months to provide its evidence to the RTB. For these reasons and considering the Tenant's evidence of prejudice, I deny the request for an adjournment.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started on June 16, 2019 for a fixed term to end June 30, 202. Rent of \$3,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,750.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. The Tenant has not provided its forwarding address in writing to the Landlord.

The Landlord states that the Tenant gave no notice to end the tenancy and that the Landlord did not learn the Tenant had moved out of the unit until it received a text from the Tenant on September 2, 2019 indicating that the Tenant had left the keys with the

concierge. The Landlord states that it made two offers for a move-out inspection by email and text. The Landlord did not provide copies of these emails or texts. The Landlord states that the Tenant did not respond so the Landlord made the inspection on its own, taking photos of damages. The Landlord does not know whether a move-out inspection report was completed. No copy of a move-out report was provided.

The Tenant states that it moved out of the unit on September 1, 2019 without any notice to the Landlord. The Tenant states that the Landlord made only 1 offer for a move-out inspection and that the Tenant did not accept this offer. The Tenant states that no other offer was made. The Parties agree that the Tenant paid no rent for September 2019 and the Tenant does not dispute the claim for this month's rent.

The Landlord states that the Tenant left two matching entry doors damaged. The Landlord states that while the Tenant made repairs so that the door was functional the Tenant caused more damage to the doors in making those repairs. The Landlord states that the damage is so extensive that new doors are required and claims \$4,889.92. The Landlord states that this amount is based on the lesser of two estimates obtained. The Landlord did not provide copies of those estimates. The Tenant states that a guest damaged the door. The Tenant states that it saw the Landlord's estimate in a meeting with the Landlord two days prior to this hearing and that the estimate is excessive as the Tenant had already incurred costs of \$700.00 to make repairs. The Tenant states that it did its own research on costs and would agree to a maximum of \$1,500.00 for this damage claim.

The Landlord states that the Tenant left the quartz countertop in the bathroom with two large chips. The Landlord states that it estimated a cost of \$800.00 to repair the chips and the Landlord claims this amount. No copy of this estimate was provided as evidence. The Tenant states that it did not leave any damage to the countertop and that no damages were there at move-out. The Tenant states that the Landlord provided

no evidence of this damage and only showed the Tenant an invoice quoting repair costs. The Tenant states that it has no way to validate the Landlord's estimate.

The Landlord states that the Tenant left a tv wall mount installed on the wall. The Landlord states that the estimated costs to make repairs to the drywall is \$500.00. The Tenant does not dispute that the wall mount was left on the wall. The Tenant states that the claim to repair the holes is excessive and that the Landlord has not provided any supporting evidence for this quote. The Tenant states that in the meeting two days ago the Landlord did not provide a separate estimate for this item as all the items were set out on one estimate.

The Landlord states that no repairs have been made to the damaged items for financial reasons. The Landlord states that the unit was rented again with the damages existing for November 1, 2019 for a one-year fixed term at a monthly rental rate of \$3,200.00. The Landlord states that the new tenants were given a deduction for the damages left in the unit and that the rental amount was also reduced to be competitive with another rental building nearby.

Analysis

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. 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. Based on the Tenant's evidence that it does not dispute the Landlord's claim for rent for September 2019 rent I find that the Landlord has substantiated an entitlement to **\$3,500.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must, inter alia, leave the rental unit undamaged except for reasonable wear and tear.

The Landlord provided no evidence to support the estimated costs being claimed for the doors. However, the Tenant's evidence is that the estimates were shown to the Tenant and although the Tenant's evidence is that the costs claimed are excessive the Tenant provides no supporting evidence of lower estimates. As there is no dispute that the Tenant left the doors damaged, given the undisputed evidence that the doors were new at the outset of the tenancy, considering the Landlord's evidence of estimated costs and that at least a portion of the rent reduction was given to the new tenants thereby showing a loss, I find on a balance of probabilities that the Landlord has substantiated an entitlement to the costs claimed of **\$4,889.92**.

Given the lack a move-out condition report to support the Landlord's claim that the Tenant left the quartz countertop damaged and considering the Tenant's evidence that no damage was caused by the Tenant, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage. I therefore dismiss the claim to repair the countertop.

While the Landlord has provided oral evidence of the cost for drywall repair, I consider that this repair in fact has not occurred and that the wall mount was left for the new tenants. Under these circumstances and given the Tenant's evidence that the cost is excessive I find that the Landlord has not substantiated the costs claimed. I therefore dismiss this claim. 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 **\$8,489.92**. Deducting the security deposit plus zero interest of **\$1,750.00** from this entitlement leaves **\$6,739.92** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$6,739.92**.

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: January 17, 2020

Residential Tenancy Branch