



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

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 damages to the unit - 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 Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence packages.

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 May 1, 2018 and ended on October 31, 2019. Rent of \$1,300.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit and still holds that deposit. The Landlord received the Tenant’s forwarding address on either November 1 or 2, 2019. The Parties mutually conducted both a move-in and move-out inspection.

The Landlord states that its application was made on November 14, 2019 and that the filing fee was paid on that same day. The Landlord states that an error in checking off a wrong box was made in the application and that the application was resubmitted on November 21, 2019.

The Landlord states that at move-in the inspection report was completed, signed and copied to the Tenant. The Tenant states that the Landlord did not fill out any inspection report at move-in and did not provide the Tenant with a copy of any move-in report. The Tenant states that the Landlord gave the Tenant a copy of the move-in inspection report at the move-out inspection. The Tenant states that at move-out it mistakenly signed the move-in report in the area provided for any disagreement with the report. The Tenant states that as a result it did not sign the move-out report where its signature was required. The Tenant states that it wrote comments and provided its forwarding address on the move-out report. The Landlord states that this was its first experience with an inspection, and it was sloppy. The Landlord states that it did complete the report and then emailed a copy to the Tenant. The Landlord cannot recall any details around the completion of the report and states that its memory does not match the Tenant's oral evidence. The Landlord states that the Tenant refused to sign the move-out report and that "I think that aligns with how I remember it".

The Landlord states that the Tenant left the unit with damages. The Landlord provides copies of a move-in and move-out report and photos of the unit.

The Landlord states that at the onset of the tenancy the Tenant did not like the color of the paint on the bedroom walls and was given permission to paint this room with the Landlord's paint on hand. The Landlord states that the walls had previously been painted in 2016. The Landlord states that the Tenant only applied primer to the walls leaving them incomplete at the end of the tenancy. The Landlord claims \$462.00 and provides a quote for this amount. The Landlord states that it painted the walls himself with its own paint. The Landlord states that it incurred no costs other than its own time.

The Tenant states that the Landlord saw the unfinished walls when it showed the unit on October 15, 2019. The Tenant states that the Landlord did not say anything to the Tenant about its completion. The Tenant argues that the Landlord is responsible for regularly painting the unit.

The Landlord states that the Tenant did not clean the unit at move-out. The Landlord claims \$230.00 and provides a quote for this amount. The Landlord states that it did the move-out clean with the help of the new tenants. The Tenant states that the photos provided by the Landlord were taken before the Tenant had completed its move out and cleaning of the unit. The Tenant states that it left the unit reasonably clean. The Landlord states that the Tenant did remove its final belongings after the photos were taken but did not clean the unit at all.

Analysis

Section 23(5) of the Act provides that Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Section 18(1)(a) of the Regulations provides that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed. Section 24(2)(c) of the Act provides that the right of a 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 complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The move-in inspection report includes an area for the Tenant's signature identified as section 3 on the third page however there is no signature by the Tenant. The move-in report does include the Tenant's signature in the area stated by the Tenant. The Landlord has given evidence of being sloppy with the move-in inspection and has given vague evidence of completing the report. This tends to support the Tenant's evidence

that the Landlord did not give a completed report to the Tenant for signature at move-in. Further the Landlord provided no evidence of when the move-in report was provided to the Tenant and no supporting evidence that the report was given to the Tenant as required while the Tenant's evidence is that no report was provided to the Tenant until move-out when it was shown to the Tenant. For these reasons I find on a balance of probabilities that the Landlord did not complete the report and give the Tenant a copy as required under the regulations. As a result, I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38(1) 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, any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

As the Landlord's application is dated November 21, 2019, as the Landlord has provided no supporting evidence that the filing fee for the application was paid in advance of this date, and given the undisputed evidence that the Landlord received the Tenant's forwarding address no later than November 2, 2019, I find on a balance of probabilities that the Landlord did not make its application within the time required. Further as the Landlord's right to claim against the security deposit was extinguished at move-in I find that the Landlord only had the option of returning the security deposit to the Tenant and independently making an application to claim for damages to the unit. As the Landlord did not return the security deposit to the Tenant or make its application

within the time allowed, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,300.00**.

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. 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. While the Tenant may or may not have left the unit unclean, as the landlord did not provide any evidence of the hours or costs of its labour and no evidence that it incurred the costs claimed, I find on a balance of probabilities that the Landlord has not substantiated the cleaning costs claimed and I dismiss this claim.

While a landlord is required to maintain the life of interior paint, given the Landlord's evidence that the paint was less than 4 years old I consider that the Landlord would not have had to paint the bedroom walls for at least another year. It is undisputed that there was a mutual agreement for the Tenant to paint the bedroom walls as the Tenant did not like the existing color at move-in. There is no evidence of a mutual agreement for a partial painting of the walls or that the Tenant was not aware on October 15, 2019 that the job was still incomplete thereby requiring the Landlord to draw this to the Tenant's attention. I therefore find on a balance of probabilities that the Landlord has substantiated that the Tenant breached the agreement. As the Landlord did not provide any evidence to support that it incurred the costs claimed, I find that the Landlord is only entitled to a nominal sum of **\$100.00** for the Tenant's breach.

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 **\$200.00**. Deducting this

from the **\$1,300.00** owed to the Tenant leaves **\$1,100.00** to be returned to the Tenant forthwith.

Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$1,100.00**. 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: April 08, 2020

Residential Tenancy Branch