



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL, FFL

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 Parties 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: the tenancy under written agreement started May 1, 2018. Rent of \$1,350.00 was payable on the first day of each month. The Tenants paid full rent for July 2019 and moved out of the unit on July 6, 2019. The security and pet deposits have been dealt with. The Landlord received the Tenants’ forwarding address on June 25, 2019. At the outset of the tenancy the Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. No move out inspection

was conducted with the Tenants. The Landlord completed the move-out inspection alone on September 6, 2019 and created the report on January 8, 2020. A previous decision January 8, 2020 (the "Previous Decision") granted the Tenants, inter alia, return of double the security deposit.

The Landlord states and submits that during the tenancy the Tenants harassed the Landlord by turning off the electricity, calling the police, changing the locks to their unit, making false claims against the Landlord and threatening to act on their rights and bring legal action against the Landlord. The Landlord claims \$5,000.00 as pain and suffering or loss of quiet enjoyment.

The Landlord states that it had a person assist the Landlord with the move-out inspection and that this person lost wages as a result. The Landlord claim \$140.00 as this person's lost wages.

The Landlord states that the Tenants left all the walls in the unit with spots and patches that were not sanded. The Landlord states that it was unable to afford the costs to paint the walls until April 2020. The Landlord claims \$3,150.00 as the costs to paint the walls and ceilings of the unit. The Landlord states that the ceiling above the stove was stained with smoke or grease. The Landlord states that the ceiling damage may have occurred from use of the stove as the Tenants do not smoke. The Landlord states that the stove has an overhead operating fan. The Landlord states that the unit had been last painted at the end of April 2018. The Landlord provides photos of the unit taken at move-in. The Landlord provides an invoice for the costs claimed. The Landlord states that it had obtained a quote of \$2,700.00 to paint the walls without the ceilings and another quote for the walls and ceiling that was higher than the cost being claimed.

The Tenant states that the only damage to the walls was from picture hanging nails and thumbtacks. The Tenant states that the nail spots were filled and sanded along with the pre-existing holes on the walls. The Tenant states that the paint was not damaged.

The Tenant states that the Landlord's video evidence shows the repairs done by the Tenants and that the Landlord provided no photos of any damaged wall or ceiling paint. The Tenant states that the photos provided by the Landlord were not taken at move-in as can be seen on the date stamps indicating that they were taken at the end of the tenancy. The Tenant states that the amount claimed by the Landlord is for professional costs and that the Landlord informed the Tenants at the outset of the tenancy that the unit had been painted by the Landlord itself. The Tenant argues that the Landlord did not take similar steps to reduce the painting costs after the end of the tenancy. the Tenant states that the ceiling stain was present at the onset of the tenancy and that the Landlord pointed it out to the Tenants on the walk-through telling them it was from water damage. The Tenant states that the Landlord's photos of the area shows old repairs to the area.

The Landlord states that the Tenants damaged the bathtub finish by using some kind of scouring agent. The Landlord states that the bathtub is 7 years old. The Landlord provides a quote of \$892.00 for the cost of refinishing and claims the lower costs obtained of \$451.50. The Landlord provides an invoice for this cost. The Landlord provides a photo of the bathtub that the Landlord states was taken in September 2019. The Tenant states that they caused no damage to the finish. The Tenant states that the Landlord's photo only shows a small area of the bathtub and that it was taken on November 27, 2019. The Tenant states that the finish had lines on it at move-in in the area the Landlord states was scratched by the Tenants. The Tenants provide a photo of the bathtub.

The Landlord states that the Tenants did some cleaning to the unit but that nothing was left clean such as kitchen drawers and cupboards and blinds. The Landlord provides photos and claims \$280.00 for a "deep clean". The Landlord provides an invoice for this cost. The Tenants state that they cleaned the entire unit including the blinds that were not cloth, the windows, tracks and appliances. The Tenant states that they only missed cleaning under the stove that likely did not have wheels as the Landlord's photos only

show the underneath of the stove through the open bottom drawer of the stove. The Tenant states that the photos provided by the Landlord were taken at the end of November 2019 and that the photo claimed by the Landlord as showing dirt is only dust accumulated over the 4 months since the end of the tenancy.

The Landlord states that the Tenants failed to clean the carpets at the end of the tenancy and claims cleaning costs of \$80.00. The Landlord provides an invoice and photos. The Tenant states that although steam cleaners were arranged the cleaning did not occur as the Tenants moved out of the unit due to the Landlord's behavior. The Tenant states that the carpets were only vacuumed.

The Landlord states that the Tenants left 9 lightbulbs unworking. The Landlord states that they could have been as old as 7 years by the end of the tenancy. The Landlord states that it obtained the replacement lightbulbs from a helper and paid this person \$45.00 for the bulbs. The Landlord does not know where the person purchased the bulbs, or the costs paid by the person. The Landlord provides an invoice from this person. The Tenant states that at move-out all the light bulbs were working as can be seen in the photos and video. The Tenant states that at the onset of the tenancy one of the light fixtures was missing bulbs that the Tenants replaced and that during the tenancy a few bulbs stopped working and were replaced by the Tenants.

The Landlord states that because Tenants did not complete the move out inspection and because the Landlord could not afford to make repairs to the damages caused by the Tenants the Landlord was unable to rent the unit after the end of the tenancy. The Landlord states that the unit was not advertised for rent until September 2019 online and that the Landlord then decided not to rent the unit without the repairs being done. The Landlord states that the unit was advertised again in April 2020 and still has not rented. The Landlord claims lost rental income of \$8,100.00. The Tenant states that they did nothing to cause the Landlord lost rental income. The Tenant states that the previous decision dated January 7, 2020 finds that the Landlord did not comply with the

Act's requirements for a move-out inspection. The Tenant states that on June 25, 2019 they gave notice to end the tenancy for the end of July 2019.

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. Nothing in the Act or the tenancy agreement provides the Landlord with quiet enjoyment. The Landlord's evidence of harassment appears to be in relation to the Tenants pursuing their rights under the Act. This is not evidence of a breach of the tenancy agreement or the Act. Where a tenant unreasonably disturbs or interferes with a landlord or causes a risk to the landlord's property, the landlord's remedy under the Act would be to end the tenancy for cause. For these reasons I find that the Landlord has not substantiated that the Tenants breached the Act, or the tenancy agreement and I dismiss the claim for pain and suffering.

Given the Landlord's evidence that the lost rental income is claimed as costs to carry out the Landlord's obligation in relation to the move-out inspection and as nothing in the Act requires tenants to be responsible for the costs of a landlord carrying out its obligations, I find that the Landlord has not substantiated the costs claimed of \$140.00 and I dismiss this claim.

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. The Landlord's evidence of the state of the unit at move-out is not supported by a duly completed move-out inspection or photos taken at the end of the tenancy. I therefore consider that the Landlord's move-out inspection report self-completed several months later to lack reliability. Given the Landlord's evidence that cleaning costs were incurred 9 months after the tenancy ended and a few days after the painting of the unit, it would be reasonable to expect that dust and dirt would have accumulated throughout the unit during this long period and as a

result of the repairs done to the unit. For these reasons and given the Tenant's supported evidence of cleaning, I find on a balance of probabilities that the Landlord has not substantiated the total costs for cleaning the unit. Given the Tenants' evidence of not cleaning under the stove, I find that the Landlord has substantiated that the Tenants failed to leave this area of the unit reasonably clean. However, as the Landlord has provided no evidence of the portion of costs that arose from cleaning under the stove, I find that the Landlord has failed to substantiate any cost for this cleaning. I dismiss the Landlord's claim for the "deep clean" costs.

The Landlord did not provide evidence of a duly completed move-out inspection report. The Landlord did not provide any photos of any wall damage prior to repairs. The photo of the ceiling tends to support the Tenants' evidence that this mark was pre-existing as it does appear to be a patched area. I accept the Tenants' supported and undisputed evidence of having used finishing nails or smaller pins for the purpose of hanging pictures and there is no evidence that the tenancy agreement restricts the number of pictures that may be hung. It is undisputed that the Tenants patched all the holes in the walls including pre-existing holes. For these reasons, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused damage to the ceiling and that any damage left to the walls was solely a result of reasonable wear and tear for which the Tenants are not responsible. I therefore dismiss this claim.

The photo of the bathtub shows a very small spot on the bathtub and no damage to the finish can be determined on that spot. There is no other supporting and reliable evidence of any other damage to the bathtub. given the Tenants' evidence that they did not damage the finish I find on a balance of probabilities that the Landlord has not substantiated that the Tenants damaged the bathtub finish. I therefore dismiss this claim.

While it may be that the Tenants felt they had to move out of the unit due to the Landlord's behavior, they are still responsible for leaving the carpets cleaned and there

is no evidence that no other person or business could have completed this task without the presence of the Tenants. Given the undisputed evidence that the Tenants did not steam clean the carpets at move-out and as the tenancy was over a year in length, I find that the Landlord has substantiated that the Tenants failed to leave the carpet reasonably clean. Given the Landlord's invoice for the cleaning costs I find that the Landlord has substantiated an entitlement to **\$80.00**.

Given the lack of a duly completed move-out inspection indicating burned out lightbulbs with no other supporting evidence of such and considering the Tenants' evidence of no burned-out bulbs, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the loss claimed. I therefore dismiss the claim for light bulb costs.

The Landlord provided no understandable rationale on how the Tenants not attending the move-out inspection would cause lost rental income. Further the Previous Decision finds that the Landlord itself failed to meet the Act's requirements for a move-out inspection. It is undisputed that the Tenants moved out of the unit on July 6, 2019 with full notice given to the Landlord. This is not evidence of any breach. The Landlord's only other evidence for not renting the unit is that the Landlord could not afford the repairs to damages caused by the Tenants. As the Tenants have only been found to have failed to clean the carpet, the remaining repairs were the responsibility of the Landlord. The Landlord's inability to afford those remaining repairs is not evidence of the Tenants having caused any lost rental income. I therefore dismiss this claim.

As the Landlord's application has met with very limited success amounting to less than the filing fee, I dismiss the Landlord's claim for recovery of the filing fee.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$80.00**. 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: May 27, 2020

Residential Tenancy Branch