



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened in response to an application made March 9, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for damage 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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord states that it is a Landlord in these proceedings and not an agent. The Tenant does not dispute this. The Tenant confirms its email address as set out in the Landlord’s application.

Preliminary Matters

It was noted at the onset that the Tenant has an application for, inter alia, the return of the security deposit that has been scheduled for a future date. The Landlord does not wish to have the Tenant’s application joined at this late date as the Landlord did not have the materials for the future hearing in front of him for this hearing, was not expecting to have the filed joined and was not prepared to have the matter heard with the current application. Given the Landlord’s reasons that I consider valid, I decline to join the Tenant’s application for this hearing.

The Tenant states that it received no photo or other evidence from the Landlord and only received the Landlord's application and notice of hearing. The Landlord states that it served the Tenant with its evidence in person on March 19, 2020 at 6:08 p.m. in the same package as the application and notice of hearing. The Landlord states that it does not have a witness as to the contents of the package given to the Tenant. The Landlord was given an opportunity to seek an adjournment in order to provide its photo evidence to the Tenant and the Landlord declined an adjournment. The Landlord states that it will proceed with the hearing without the photo evidence.

The Landlord states that it received no evidence from the Tenant for this hearing. The Tenant states that it sent its evidence package to the Landlord by registered mail on June 29, 2020 and that postal tracking indicates that the Landlord received this package on July 3, 2020. The Landlord states that this evidence was for the future hearing on the Tenant's application.

Rule 3.5 of the Residential Tenancy Branch Rules (the "Rules") provides that at the hearing the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that the respondent was served with all evidence. Rule 3.16 of the Rules provides that a respondent must also be prepared to demonstrate that the applicant was served with its evidence. Given the lack of witness evidence of service of the Landlord's evidence to the Tenant and given the Tenant's denial of receipt of the Landlord's evidence I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate that the Tenant was given its evidence. I therefore decline to consider the Landlord's documentary and digital evidence. Noting that the Tenant made its application for the future hearing on June 22, 2020, given the Tenant's evidence that the Landlord was served with an evidence package on June 29, 2020 and given the Landlord's undisputed evidence that this package was only for that future hearing I find on a balance of probabilities that the Landlord did not receive the Tenant's evidence for these proceedings. I therefore decline to consider the Tenant's

documentary and digital evidence. Only the oral evidence of each Party will be considered for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retention of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy of a basement suite in a house occupied by the Landlord started September 1, 2015.

Throughout the tenancy rent of \$1,000.00 was payable on the first day of each month.

In January 2020 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use with an effective date of April 1, 2020 (the "Notice"). The Tenant gave the Landlord 10 days notice and moved out of the unit on February 29, 2020. No move in condition report was completed and no move-out inspection or report was completed. The Landlord received the Tenant's forwarding address before the Landlord made its application.

The Landlord states that it cannot recall if a security deposit was collected and assumes that it was. The Tenant states that the Landlord collected \$500.00 as a security deposit.

The Tenant states that it asked the Landlord for a move-out inspection and that the Landlord refused telling the Tenant that it would inspect the unit alone. The Tenant states that the Landlord then informed the Tenant of damages. The Tenant states that it requested an opportunity to inspect the unit for these damages and to take photos. The Tenant states that the Landlord initially agreed and then cancelled the inspection.

The Landlord states that after being given the Notice the Tenant asked for extra time to move out of the unit to which the Landlord agreed. The Landlord states that the Tenant then moved out at the end of February 2020 and as a result the Landlord claims rent of

\$2,000.00 for March and April 2020. The Landlord confirms that the Tenant paid full rent for February 2020. The Landlord states that since the Tenant moved out of the basement suite unit in the Landlord's house it has been used by its children as a play area.

The Landlord did not provide a monetary order worksheet setting out the details for its claim of \$2,000.00 for damage to the unit. The Landlord was given opportunity during the hearing to set out the separate amounts being claimed. The Landlord set out claims of \$315.00 for plumbing costs, \$350.00 for damage to floor tiles, \$75.00 for the cost to replace a toilet seat, and \$300.00 for the costs of repairing damage to floor molding. The Landlord confirms that these are the total claimed amounts for damages to the unit.

The Landlord states that during the tenancy the Tenant caused the toilet to be plugged requiring repairs. The Landlord claims \$315.00 as the cost of those repairs. The Tenant states that on December 31, 2019 the toilet would not flush. The Tenant states that after the Landlord was unable to resolve the problem a plumber was brought in. The Tenant states that the plumber informed the Tenant that the problem was with the main line that was blocked about 10 feet away.

The Landlord states that the Tenant caused cracks on 4 tiles that required replacement. The Landlord claims \$350.00 as the costs of labour done by a contractor to replace the tiles with tiles already on hand with the Landlord. The Tenant states that it did not damage the tiles that had hairline cracks caused from the concrete flooring that had not been set properly.

The Landlord states that during the tenancy in January 2020 the Tenant informed the Landlord of the toilet seat being cracked. The Landlord states that the Tenant replaced the toilet seat, but it was too small. The Landlord states that the cracked toilet seat was present at the end of the tenancy. The Landlord claims \$75.00 as the cost to replace the seat. The Landlord states that the original toilet seat was a high-grade product.

The Tenant states that the seat cracked when the Tenant sat on it. The Tenant states that it was a usual toilet seat and does not know if it was high grade. The Tenant states that the cost claimed is reasonable.

The Landlord states that the Tenant left the transition strip for the flooring between the tile and laminate damaged. The Landlord claims the repair costs of \$300.00. The Landlord states that this was done by a contractor in May 2020. The Tenant states that one area of the transition strip was damaged at move-in as they had not been installed properly. The Tenant states that it repaired the strip during the tenancy. The Landlord states that the Tenant left the strip broken in half.

Analysis

Section 50 of the Act provides as follows:

- (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
 - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

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. As the Landlord ended the tenancy for its own use and used the unit after the end of the tenancy, and as the Tenant acted in compliance with the Act by

moving out of the unit earlier than the effective date of the Notice, I find that the Landlord has not substantiated that the Tenant breached the Act or tenancy agreement causing a rental loss for the Landlord. I therefore dismiss the Landlord's claim for \$2,000.00 in rent.

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. 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 the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the lack of an invoice or receipt for labour costs to repair the tiles, I find on a balance of probabilities that the Landlord has not substantiated that the cost claimed for repairs was incurred. I dismiss the claim for \$350.00. Given the Tenant's oral evidence of the plumbing issue being caused by a blockage in the main line and the lack of supporting evidence from the Landlord on the cause of the blockage, I find on a balance of probabilities that the Landlord has not met its burden of proof in establishing that the Tenant caused the need for repairs. I dismiss the claim for \$315.00. Given the Tenant's evidence that it broke the toilet seat, does not know the grade of the toilet seat and that the amount claimed by the Landlord for its replacement is reasonable I find on a balance of probabilities that the Landlord has substantiated both that the Tenant caused the damage and the costs claimed. The Landlord is therefore entitled to **\$75.00** for the cost of replacing the toilet seat.

Section 21 of the Residential Tenancy Branch 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. Given the lack of a move-in or move-out inspection report, the Landlord's evidence that the transition strip repairs were done in May 2020, the Landlord's evidence that its children

used the lower suite after the end of the tenancy, and given the Tenant's evidence of pre-existing damage to the transition strip and its repaired state at the end of the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage to the transition strip. I dismiss the claim for \$300.00.

As none of the Landlord's claims have been successful except for a minor claim that amounts to less than the filing fee I find that the Landlord is not entitled to recovery of its filing fee and I dismiss that claim. Given the Landlord's evidence of possible collection of a security deposit, the Landlord's application that sets out a claim against a security deposit of \$500.00 and the Tenant's evidence of the payment of a security deposit of \$500.00 I find on a balance of probabilities that the Landlord collected and still holds a security deposit of \$500.00. Deducting the Landlord's entitlement of **\$75.00** from the security deposit plus zero interest of **\$500.00** leaves **\$425.00** to be returned to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$425.00**. 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: July 17, 2020