



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, 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 unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damage to the unit - Section 67; and
4. An Order to retain the security deposit - Section 38.

Both Parties attended the hearing and were 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 or undisputed facts: The tenancy under written agreement started on July 1, 2019 on a fixed term to end July 1, 2020. The Tenant moved out of the unit and returned the keys on June 30, 2020. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. Rent of \$1,200.00 was payable on the first day of each month. The tenancy agreement provides that the Tenant pays 35% of the heat, water and gas costs. The Landlord received the Tenant’s forwarding address on August 4, 2020. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant.

The Landlord states that on July 1, 2020 it made two offers to the Tenant for a move-out inspection. The Landlord states that no date or time was offered and that the Tenant was only asked when available. The Landlord states that the Tenant did not want to attend the inspection, so the Landlord completed it by itself on either July 1 or 3, 2020. The Tenant states that no move-out inspection was offered by the Landlord who saw the Tenant move out of the unit.

The Landlord states that the Tenant did not fully clean the carpet and left it discolored. The Landlord states that the carpet is quite old and around 10 years old. The Landlord claims \$112.00 as the costs to clean the carpets in two bedrooms. The Landlord provides a receipt for this cost. The Tenant states that it did use a carpet cleaning machine to clean the carpet in both rooms.

The Landlord states that the Tenant left garbage in the unit and claims \$299.25 as the estimated costs of removal. The Landlord states that the garbage was removed probably after 3 or 5 days and that it believes it paid \$300.00 for this cost. No invoice was provided. The Tenant states that the items in the photos are not the Tenant's and that perhaps they belong to someone else. The Tenant states that the Landlord had new tenants in the unit in July 2020 prior to both the estimate and the Landlord's evidence of the removal date.

The Landlord states that the Tenant left tv mounting holes in the walls, blue stains on the front door and a rusted dryer top. The Landlord claims \$152.98 for the costs of paint, putty and other supplies for repairs to these items. The Landlord states that the dryer is about 10 years old and that the Tenant may have left wet clothes on the lid. The Tenant states that it did not mount its tv and had it on a tv stand. The Tenant states that no holes were made on the walls during the tenancy. The Tenant notes that the Landlord's photos are not dated and were taken either before or after the tenancy. The Tenant states that the door stains were noticed by the Tenant after the Landlord

had posted a notice on the door. The Tenant states that the dryer had some rust and a small scratch at move-in and that any the Tenant did not do anything to deliberately damage the dryer lid.

The Landlord states that the Tenant also left the unit unclean with mostly the appliances. The Landlord claims \$192.08 for their labour to clean and make repairs to the unit. No invoice was provided. The Tenant states that it cleaned everything in the unit including the appliances, both in and out. The Tenant states that its Witness (the "Witness") helped clean the unit. The Witness states that everything was cleaned with nothing missed except maybe the fridge freezer. The Witness states that it tried to scrub the dryer that looked to have a stain.

The Landlord states that the Tenant was short \$100.00 rent for April 2020, \$200.00 for May 2020 and \$100.00 for June 2020. The Landlord states that on May 8, 2020 the Tenant paid \$200.00. The Landlord claims unpaid arrears of \$200.00. The Landlord states that the Tenant failed to pay for utility costs. The Landlord states that the Tenant paid the utility costs periodically and left \$190.20 owing. The Landlord claims this amount and provides invoices and receipts.

The Tenant states that in April 2020 it paid \$400.00 in cash to the Landlord's wife for \$200.00 in rental arrears and \$200.00 in utilities. The Tenant states that it paid \$200.00 in cash again for utilities on May 1, 2020 and states it sent an etransfer of \$1,100.00 on May 28, 2020. the Tenant states that it did not trust the Landlord and wanted to pay by cheque but instead sent an etransfer of \$200.00 for the remaining May 2020 arrears after May 28, 2020. The Tenant states that no receipts were ever provided for cash payments.

The Landlord withdraws its claims for supply costs of \$10.97 and \$16.37.

The Landlord states that the Tenant never gave any notice to end the tenancy. The Landlord states that on June 24, 2020 it had advertised the unit for rent of \$1,200.00 and obtained new long-term tenants for August 2020. The Landlord states that on July 6, 2020 it rented two rooms in the unit to two tenants for rent of \$450.00 each for a total of \$900.00. The Landlord claims the July 2020 rental shortfall of \$300.00 for the Tenant's breach. The Tenant states that on April 29, 2020 the Landlord texted the Tenant informing the Tenant that its option was to either sign a two-month lease or they would advertise the unit for July 1, 2020. The Tenant states that the Landlord started showing the unit in May 2020. The Tenant states that on June 14, 2020 the Landlord did not answer its call so the Tenant left them the letter that it was moving out on June 30, 2020. The Tenant states that the two tenants for July 2020 were already renting a unit in the house as of April 2020.

Analysis

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 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.

Residential Tenancy Branch (the "RTB") Policy Guideline #40 provides that the useful life of carpet is 10 years. Given the Landlord's evidence of the age of the carpet and the Tenant's supported evidence of having cleaned the carpet, I find on a balance of probabilities that the carpet no longer had any useful life at the end of the tenancy, that the Tenant left the carpet reasonably clean in the circumstances and that its age is

responsible for the discoloration. Any costs in relation to the carpet therefore remain with the Landlord and I dismiss the costs claimed for cleaning the carpet.

The Landlord gave vague evidence in relation to the costs and removal of items it claims was left by the Tenant and provided no supporting evidence of costs incurred. For this reason, I find that the Landlord has not substantiated the costs claimed for garbage removal and I dismiss this claim.

Section 35(2) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for a move-out inspection. Section 17(1) of the Regulations provides that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. Section 35(5) of the Act provides that the landlord may make a move-out inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Given the Landlord's evidence that no date or time was offered for a move-out inspection I find that the Landlord did not have the authority to complete the inspection without the Tenant and that the inspection report was therefore not duly completed.

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. Although the Landlord provides a photo showing what appears to be nail holes from mounting a tv, this photo is undated. Given the lack of a duly completed move-out inspection report and considering the Tenant's evidence that no holes were left on the walls during the tenancy, I find on a balance of probabilities that the Landlord has not substantiated the Tenant left the damage to the walls during its tenancy. Given the Tenant's evidence of the blue stain appearing on the door after the Landlord posted a notice and considering that the Landlord did not

dispute posting a notice that would leave a blue mark, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the blue stain. Given the undisputed evidence of the duly completed move-in report I find on a balance of probabilities that the dryer had no damage at the onset of the tenancy. Given the undisputed evidence of damage to the dryer at the end of the tenancy I find that the Tenant did leave some damage. However, as the Landlord has not provided specific costs for either labour or supplies for this repair, I find that the Landlord has only substantiated a nominal entitlement of **\$50.00** for this damage. As the Landlord has not substantiated that the Tenant caused damage to the walls and door and without an invoice setting out its labour costs for these items, I am not able to determine labour costs for any cleaning that was left by the Tenant. Further the Tenant gave supported evidence of the cleaning done to the unit and there is no copy of a duly completed move-out report. Given the Tenant's evidence is that it missed the freezer I find that the Landlord has therefore only substantiated a nominal amount of **\$25.00** for its labour to clean the freezer.

The Landlord did not provide any rental income calculations or accounting documents to substantiate its claim for unpaid rent. The Landlord only provided copies of receipts. As the Tenant provided accounting with its copies of receipts that show a zero-balance owing, I find on a balance of probabilities that the Landlord has not provided sufficient accounting or calculations to support its claim of unpaid rent. I dismiss this claim.

The Landlord did not provide a receipt for any utility payment made on May 1, 2020 and did not dispute the Tenant's evidence of sometimes not providing receipts for cash payments. Further the Landlord did not provide any calculations or accounting documents to clearly set out its claim. For these reasons I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate the utility costs claimed and I dismiss this claim.

The text evidence supports that in April 2020 the Landlord informed the Tenant that if the Tenant did not confirm immediately that it did not want to extend the tenancy past the fixed term end date for a short term fixed tenancy that it would advertise the unit for July 1, 2020. There are also texts that support viewings of the unit prior to the end of the tenancy and the Landlord did not dispute the Tenant's evidence of showings in May 2020. There is no evidence that the Tenant agreed to extend the tenancy as offered by the Landlord. For these reasons I find on a balance of probabilities that in April 2020 the Landlord accepted the end of the tenancy for June 30, 2020 and acted on this acceptance by advertising the unit for rent. Further I also note that the new tenant for August 1, 2020 signed the tenancy agreement on June 26, 2020 and for more rent than was paid by the Tenant. This leads me to believe that the unit was advertised for this greater amount of rent. As the Landlord provided no supporting evidence of the advertising of the unit, even if the Tenant did not inform the Landlord that it was moving out of the unit until June 15, 2020, I find that by advertising the rent for a greater amount the Landlord failed to take reasonable steps to mitigate any rental losses arising from the short notice. For these reasons I find that the Landlord has not substantiated any lost rental income arising from the Tenant's actions and I dismiss this claim.

As the Landlord withdrew its claims for supply costs of \$10.97 and \$16.37, I dismiss these claims.

Deducting the Landlord's entitlement of **\$75.00** from the security deposit plus zero interest of **\$600.00** leaves **\$525.00** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$75.00** from the security deposit plus interest of \$600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$525.00**. 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 RTB under Section 9.1(1) of the Act.

Dated: February 17, 2021

Residential Tenancy Branch