



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on February 24, 2021 for:

1. A Monetary Order for unpaid rent or utilities - 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 Tenant applied on March 11, 2021 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

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?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 1, 2020. Rent of \$750.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit and \$375.00 as a pet deposit. The Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent with an effective move-out date of February 14, 2021 (the "Notice"). The Tenant moved out of the unit on February 8, 2021. The Tenant sent the Landlord its forwarding address in a letter dated February 11, 2021 (the "Letter") by registered mail on February 11, 2021² and the Landlord received the Letter on February 16, 2021. The Tenant did not pay rent for February 2021 and in the Letter agrees to pay \$150.00 for the period February 1 to 8, 2021. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant.

In response to the question of whether the Landlord made any offers to conduct a move-out inspection, the Landlord states that it asked the Tenant to contact the Landlord when done cleaning the unit. The Landlord states that the Landlord was planning to show up at the unit on February 12, 2021. The Landlord states that the Landlord did conduct a move-out inspection alone but did not complete an inspection report. The Tenant states that the Landlord made no offers to conduct a move-out inspection.

The Tenant claims return of the security and pet deposit totalling \$750.00.

The Landlord claims \$750.00 in unpaid rent for February 2021. The Landlord states that it is claiming the full rent as the Tenant continued to return to the yard of the unit to collect items. The Tenant agrees to pay only \$150.00 and states that they moved out of the unit in compliance with the Notice.

The Landlord states that the Tenant never returned to occupy the unit after move-out. The Landlord states that as the Tenant did not return the keys to the unit and as the Landlord did not have its own keys the Landlord purchased and installed a new lock on the unit on February 9, 2021. The Landlord claims \$43.67 as the lock replacement costs and \$28.00 as the labour costs. The Tenant states that the keys to the unit were not returned as the Tenant did not want to leave them in the mailbox.

The Landlord states that the Tenant left the fridge with missing drawers. The Landlord states that it did not investigate the costs for replacement drawers and could not find any used drawers. The Landlord states that the fridge was new in 2018. The Landlord claims \$336.00 in replacement costs for an approximate 4-year-old used fridge and \$56.00 for the labour costs for removal and installment. The Tenant states that the drawers were left outside the unit as the fridge leaked since move-in and the Tenant never used them. The Tenant states that the Landlord was not informed of the leak.

The Landlord states that the Tenant left a 2' by 1' area on the living room wall with scuffs, scrapes and a gouge. The Landlord states that the damage was in the area where a tv would have been mounted and the damage appears to have been caused by the tv falling off the mount. The Landlord states that the unit was last painted in 2000. The Landlord claims \$44.95 for the cost of paint supplies and \$84.00 for the labour costs to putty, sand and paint the one wall. The Landlord provides an invoice for these costs that include the payment of taxes. The Landlord states that their employee did the work and that they did not pay the employee the amounts set out on the invoice. It is noted that all the invoices submitted by the Landlord are for the same employee and all contain taxes paid for the amounts claimed. The Tenant states that it does not recall any gouge on the wall and that the wall had pre-existing holes from a previous tv wall mount that were therefore used by the Tenant. The Tenant states that it did not leave any damage to the wall.

The Landlord states that the Tenant did only a bit of cleaning without leaving the floors, fridge, bathroom, shower and windows cleaned. The Landlord states that the Tenant had sent the Landlord a message asking the Landlord to come to the unit as the Tenant thought the unit was clean enough. The Landlord claims \$268.80 as the cleaning costs and provides an invoice. The Landlord states that two young persons were hired to help the Landlord clean the unit over 8 hours. The Landlord provides photos. The Tenant states that it left the unit cleaned to a reasonable state and provides photos.

The Tenant states that in December 2020 it noticed rodents in the unit and that this was reported to the Landlord about a week later on December 19, 2020. The Tenant states that prior to reporting it to the Landlord the Tenant set traps and looked for holes in the unit. The Tenant states that the Landlord was informed that the Tenant found several holes in the unit. The Tenant states that the Landlord was informed of the location of those holes and the area that the Tenant has laid traps. The Tenant states that the Landlord did not investigate or remedy the problem. The Tenant submits that as a result of the infestation, other unit deficiencies and as the Landlord did not act the Tenant reported the unit to the city who conducted an inspection and confirmed the infestation in a report. The Tenant provides a copy of that report. The Tenant submits that the infestation caused damage to her personal property and an increase in utility costs in relation to the increased cleaning that was done. The Tenant claims \$300.00 in compensation.

The Landlord states that the day after being notified the Landlord and their maintenance person came to inspect the unit. The Landlord states that the unit was a mess stopping them from making any observations. The Landlord states that they dug around a bit in the cupboards but never found any droppings. The Landlord states that they were going to go to the store to bring traps and other supplies to the Tenant and that although the maintenance person was going to show the Tenant how to place items the Tenant kept putting them off. The Landlord states that on January 6, 2021 they posted a notice to enter for an inspection the next morning but upon attendance at the unit were not

granted entry. The Landlord states that it knew the city was coming to do an inspection on January 8, 2021 and that the Landlord was trying to be present at the same time. The Landlord states that the city did not find any rodents but set out other problems with the unit. The Landlord states that they did not call a professional company to inspect for a rodent infestation. The Tenant states that the unit was not a mess when the Landlord attended the day after the Tenant's initial report to the Landlord.

Analysis

Section 44(1)(a) of the Act provides that a tenancy ends only if the tenant or landlord gives notice to end the tenancy for one of the reasons allowed under the Act. Rent is payable until a tenancy ends. Section 44(1)(a)(ii) provides that a landlord may end a tenancy for unpaid rent. Given the undisputed evidence that the Landlord served the Tenant with the Notice I find that the Landlord ended the tenancy. As the Tenant moved out of the unit prior to the effective date of the Notice I find that the Tenant complied with the Notice. As the Tenant moved out of the unit on February 8, 2021, I find that the Tenant is liable for unpaid rent for the period February 1 to 8, 2021 inclusive. The Landlord is therefore entitled to unpaid rent of **\$214.32**. I calculate this amount based on a per diem rate of \$26.79 (\$750.00/28) for 8 days.

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 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. There is no duly completed move-out report. Although the Landlord provides photos of the unit taken after the Tenant moved out of the unit, the Tenant also provided photos of the unit at move-out. These photos tend to support each other's testimony of the state of the unit, however as the Landlord bears the burden of proof I find on a balance of probabilities that the Landlord has not sufficiently substantiated that the Tenant left the unit other than reasonably clean. I therefore dismiss the Landlord's claim for cleaning costs.

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Although the Tenant did not leave the keys to the unit, there is no evidence that the Landlord had any concerns that the Tenant would attempt any re-entry after move-out or that the unit was otherwise not secure with the existing lock. In these circumstances and given the Landlord's evidence that no master key to the unit was retained by the Landlord I find that the Landlord failed to take reasonable steps to ensure their entry to the unit or to reduce their costs for a new lock. For this reason, I dismiss the claim for the lock change.

The photos of the fridge and the Tenant's undisputed evidence that the fridge leaked since move-in tends to support that the fridge was older than stated by the Landlord and I note that the Landlord provided no evidence to support the age of the fridge. I also consider that the Landlord provided no evidence that replacing the fridge drawers was more expensive than purchasing the fridge to show that the Landlord took reasonable steps to reduce the costs claimed. For these reasons, I dismiss this claim.

Policy Guideline #40 provides that the useful life of interior paint is four years. Given the Landlord's evidence of the last time the unit was painted I find that the paint on the walls no longer had any useful life or value lost by the end of the tenancy and that the paint costs therefore remain with the Landlord.

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. Given the lack of any damage noted to the

wall in the move-in report and the Landlord's photos taken after move-out I find on a balance of probabilities that the Tenant did leave some damage. Although the Landlord's invoice does set out separate costs for the puttying of the wall in the amount of \$50.00, given the Landlord's evidence that its employee did work on the unit as a paid employee and that no extra monies were paid to the employee, as would have been done for a contractor, I find on a balance of probabilities that the Landlord has not substantiated that it incurred the costs claimed. For this reason, I dismiss the claim for repair to the wall.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Given the Tenant's evidence of a rodent infestation supported by the report from the city I find on a balance of probabilities that rodents were in the unit, likely from the onset of the tenancy. Further, I consider that the Landlord failed to act reasonably to remedy the situation by not immediately bringing in a pest control company and by not making a formal request to inspect the unit until approximately 3 weeks after the Tenant's report. I note that the Landlord's evidence indicates that the Landlord did not give the Tenant sufficient advance notice of entry for this inspection. I also am disturbed by the Landlord's apparent reliance on the Tenant to correct the situation by carrying out pest control activities. The Tenant gave undisputed evidence of holes in the unit allowing rodents to enter the unit and there is no evidence that the Landlord made any attempts to close the holes in the unit. For these reasons I find that the Landlord failed through its negligence to provide and maintain the unit as required under the Act.

Although the Tenant provides a utility bill in support of its compensation claim, I consider that the evidence of the presence of the rodents, in addition to the evidence damage to belongings, supports a finding of a disturbance of the Tenant's right to quiet

enjoyment of the unit. For this reason, given the Landlord's lack of sufficient response in remedying the situation, and as the Tenant is seeking a very reasonable amount of compensation, I find that the Tenant is entitled to the **\$300.00** claimed.

As the Landlord's claims have met with limited success, I find that the Landlord is only entitled to recovery of the half the filing fee in the amount of **\$50.00** for a total entitlement of **\$264.32**. Deducting the Landlord's entitlement of **\$264.32** from the Tenant's combined security and pet deposit plus zero interest of **\$750.00** leaves **\$485.68** owed to the Tenant. Adding this amount to the Tenant's entitlement of **\$300.00** brings the total owed to the Tenant to **\$785.68**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$785.68**. 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 15, 2021

Residential Tenancy Branch