



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNDC, FF

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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damages to the unit – Section 67;
4. A Monetary Order for compensation – Section 67; and
5. 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 that the tenancy ended and that the Landlord confirmed that it does not require an order of possession. Both Parties identified witnesses that they wished to have provide evidence however the witnesses were ultimately not called to give evidence by the Parties.

Issue(s) to be Decided

Does the Tenant owe unpaid rent?

Has the Tenant left the unit with damages?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on November 1, 2014 and ended on January 12, 2015. Rent of \$600.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit. The Parties mutually conducted a move-in inspection and completed a condition report. This report was provided as evidence by the Landlord.

The Landlord states that the Tenant was offered a move-out inspection on January 12, 2015 for that day and that the Tenant refused. The Landlord states that the Tenant signed to waive return of the security deposit. The Landlord states that no second offer for an inspection was made. The Landlord provided copies of the move-in inspection and copies of inspection reports dated November 28 and December 30, 2014. The Tenant states that she did participate with the Landlord for the move-out inspection. The Tenant states that the Landlord was verbally told to retain the security deposit only for the damage done to the one bedroom by the Tenant's grandson.

The Landlord provided three condition reports: the move in condition report notes existing cigarette burns to the living room and 2nd bedroom flooring and the "fair" condition of the living room wall paint; the report dated November 28, 2014 and signed as agreed to by the Tenant indicates no change except for damage to a door and damage to the one bedroom. This report also notes "cigarette damage throughout" as a general statement; and the last report dated December 30, 2014 indicates that the Tenant did not agree with the condition report.

The Landlord states that no rent was paid for January 2015 and claims \$600.00. The Tenant states that while no rent was paid for January 2015, the Tenant moved out of the unit as requested by the Landlord and that the Tenant should therefore not have to pay the full rent.

The Landlord claims \$75.81 for food and fuel costs to attend to business at the rental unit.

The Tenant does not dispute that the Tenant's grandson caused the damage to the doors and walls of a bedroom as claimed by the Landlord.

The Landlord states that the front door of the unit was left with a hole and that the door was replaced. The Landlord states that the Tenant never told the Landlord about any problems with the door. The Landlord claims replacement and labour costs. The Landlord states that the door cost \$231.00. The Tenant states that the front door was damaged at move in and was hard to close. The Tenant states that her grandson kicked the door closed causing damage only to the door frame.

The Landlord states that the living room walls had several nail holes and the Landlord states that the walls required patching and painting. The Landlord claims labour and supply costs not separately identified. The Tenant states that only picture hanging nails were used in the living room and that there was no fist hole on the wall. The Tenant states that the paint in the unit was really old. The Tenant states that the only room with damage was the grandson's bedroom.

The Landlord states that the bathroom window was left cracked and the living room window was off its track. The Landlord claims the costs of the supplies and labour. The Tenant states that the bathroom window was cracked at move-in and that no other windows were damaged.

The Landlord states that the Tenant left the kitchen walls dirty and that they required washing. The Landlord claims the cost of labour. The Tenant states that the walls were not dirty and that only a cup of coffee had splashed on the wall. The Tenant states that the Tenant was still cleaning the unit at move-out and wanted to finish but the Landlord started cleaning the unit and hurried the Tenant out of the unit.

The Landlord states that the bedroom, kitchen and living room blinds were broken and the Landlord claims the cost of one blind that was replaced. The Landlord does not know how old the blinds were. The Tenant states that the blinds in the living room and bedroom were so old that they fell apart from regular use.

The Landlord states that the Tenant left cigarette burns on the living and bathroom room carpet. The Landlord states that the carpet was not replaced or otherwise repaired and the Landlord claims the costs of cleaning. The Tenant states that there is no carpet in the living room and that there were cigarette burns in the bedroom carpet at move-in.

The Landlord claims a global amount of \$835.00 for cost of labour to make all the repairs to the unit. The Landlord also provided several receipts for supplies and sets out a total monetary amount on the application for \$2,712.27. No monetary worksheet was completed. The amount identified by the Landlord for labour costs, business costs and unpaid rent indicates that the total amount of \$1,201.46 is being claimed for supplies. The Landlord provided photos

identified variously as damages to a door and door frame, damages to walls and damage to carpet. The locations of the walls and carpet are not identified.

Analysis

Section 26 of the Act provides that rent is due and payable as set out in the tenancy agreement. Although the Tenant argues that she should only pay rent to the date that she moved out, as the full amount of rent is payable on the first of the month under the terms of the tenancy, and given the undisputed evidence that the Tenant failed to pay rent for January 2015, I find that the Landlord has substantiated an entitlement of **\$600.00**.

Section 35 of the Act provides that at move-out a landlord and tenant must together inspect the condition of a rental unit and that the landlord must offer the tenant at least two opportunities for the inspection. Section 36 of the Act provides that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not provide the tenant with two opportunities for inspection. While I tend to accept that the Parties likely did not conduct a mutual inspection at move-out, based on the Landlord's evidence that a second opportunity for inspection was not offered, I find that the Landlord's right to claim against the security deposit was extinguished at the end of the tenancy.

Section 38 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

When the Landlord received the Tenant's forwarding address is irrelevant as the Landlord's right to claim against the security deposit was extinguished at move-out. As the Landlord did not return the security deposit I find that the Landlord must now return double the security deposit plus zero interest in the amount of **\$600.00** to the Tenant.

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. 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.

Given the photos of the front door and considering the Tenant's evidence of the door being kicked, I find that the Landlord has substantiated that the door was left damaged by the Tenant. However accepting the Tenant's credible evidence that the door had pre-existing damage I find that the Landlord has only substantiated that the Tenant contributed to the damage and I find that the Landlord is only entitled to half the cost of the labour and materials to replace the door. As the Landlord provided a clearly identifiable invoice for \$231.00 setting out both labour and supplies for the door, I find that the Landlord is entitled to **\$115.50** for the damage to the door.

Given the photo of a wall that appears to have splash marks and considering the Tenant's evidence that the kitchen wall did have a drink splashed on it, I find that the Landlord has substantiated that at least one kitchen wall required wiping. Given the photo of the carpet I also accept that the Tenant left the carpet unclean. However, the Tenant's evidence of the Landlord's starting to clean and hurry the Tenant out of the unit was not disputed by the Landlord. I accept therefore that the Landlord stopped the Tenant from completing the cleaning and therefore cannot now seek compensation. I therefore dismiss the claims for washing the kitchen walls and cleaning the carpet.

Given the lack of a move-out report, photos of the living room walls, photos of the windows and photos of blinds, given that the move-in report indicates a problem with the bathroom window and that the second agreed inspection reports notes no changes other than to the door and bedroom, and considering the Tenant's denial of damage both at the hearing and on the last condition report I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant caused the damages claimed. I therefore dismiss the claims in relation to these items.

Given the Tenant's agreement that the Tenant left the one bedroom damaged and as I am satisfied that the Tenant would not likely have repaired this room on her move-out date, I find that the Landlord has substantiated its claim to compensation to repair the room. However given the uncertainty provided by the lack of a monetary worksheet or evidence of the apportionment of labour and supplies, I am unable to make any exact determination of costs. I

find therefore that I may only determine a nominal and global amount of **\$200.00** for these damages.

As the Act does not provide a landlord any basis for a claim in relation to carrying out its duties and obligations, I dismiss the Landlord's claim for \$75.81. As the Landlord's application has met with limited success I decline to award recovery of the filing fee. The Landlord's total entitlement is **\$915.50**. Deducting the **\$600.00** that must be repaid to the Tenant leaves **\$315.50** owed by the Tenant to the Landlord.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$315.50**. 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 *Residential Tenancy Act*.

Dated: July 17, 2015

Residential Tenancy Branch

