



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD O FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for money owed or compensation for damage to the rental unit pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month to month tenancy began on June 1, 2014 with a rental amount of \$1600.00 payable on the first of each month. The tenant vacated the rental unit on May 1, 2016. The landlord continues to retain the \$800.00 security deposit paid at the outset of the tenancy. The landlord sought an \$800.00 monetary order and to retain the security deposit towards the monetary amount.

The landlord testified that the tenant was scheduled to vacate the rental unit by noon on May 1, 2016. She testified that the property had been sold and the new owners were

waiting to take possession and move in to the rental unit on May 1, 2016. The landlord testified that the tenant did not vacate the rental unit until later that day. The landlord testified that the police were called to accompany the tenant off the property. The landlord testified that, as a result of the tenant's delay moving out of the residence and the damage left within the rental unit, the landlords were required to take additional steps (repairs and compensation) to satisfy the new owners.

The landlord provided photographic evidence showing damage to the floors, door-frames, walls and appliances as well as other fixtures (chandeliers included) of the rental unit. The landlord submitted a copy of the condition inspection report that documented a unit in good condition at the outset of the tenancy and in disrepair at the end. The landlord testified that, during a walk through condition inspection at the end of the tenancy, the landlords noted damaged included but not limited to the following;

- Grime and dirt in cupboards, refrigerator, stove;
- Broken refrigerator electric buttons, drawers and shelves;
- Stained carpet throughout the residence;
- Broken shower door;
- Dent and scratches on the washing machine door;
- Broken curtain rod;
- Stickers and decals on the walls;
- Several missing or damaged outlet covers;
- Exposed wiring;
- Damaged lighting ("chandeliers"); and
- Leak in the bathroom within the unit.

The tenant testified that she was tired after a long day of moving and was not able to participate fully in the walk through condition inspection at the end of the tenancy. She agreed that there was *some* damage to the rental unit that might be considered beyond normal wear and tear however she submitted that she did not believe the landlord was entitled to retain all or a portion of her security deposit.

The tenant testified that she was not aware of the leak in the bathroom. She testified that the exposed wiring and the damage to the washer door were there when she moved in but that she did not notice them at the condition inspection at move-in. She indicated that she did not know what happened to the outlet covers but she thought they were that way from the outset. She testified that her children put stickers and decals on the wall: she thought that they could be removed without damage. She acknowledged

that some photographs showed stain carpets and nail polish on the walls. She testified that the bathroom shower door just needed to be put back on its tracks.

The tenant testified that the broken refrigerator drawers and shelves were as a result of her children climbing or reaching up in the refrigerator. She testified that her son had used a ruler or pencil to damage the refrigerator exterior buttons. She submitted that the stickers and decals on the walls, the shower door as well as the refrigerator damage were within the scope of reasonable wear and tear.

The landlord submitted an invoice for \$237.44 for the replacement of the washing machine door. The landlord submitted 3 retain receipts. The landlord testified those receipts represented items that they were required to purchase to make repairs to the unit at the end of this tenancy. The landlords testified that she and her co-landlord made some repairs to the unit themselves to improve the unit for the new owners.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord has shown that there was damage to the rental unit at the end of the tenancy. Her invoice and receipts dated within days of the end of the tenancy as well as the invoice for replacement of the washer drawer show that she was required to make improvements and repairs at the end of the tenancy. I find that the photographic evidence supplied by the landlord was very informative in proving the extent of the damage at the end of the tenancy.

I find that the tenant acknowledged some damage in her testimony, referring to the photographs and describing damage done by her children. I find that the documentary evidence and the testimony of both parties provide sufficient proof to show that the tenant is responsible for damage within the rental unit. As well, I note that the landlord provided a condition inspection report that described the condition of the unit at the start and end of the tenancy. Pursuant to section 21 of the Residential Tenancy Regulations,

the condition inspection report represents the best evidence of the state of repair and condition of the rental unit unless either a party has a preponderance of evidence to the contrary.

The landlord provided minimal evidence, beyond their testimony, to prove actual monetary loss. The landlord provided 3 receipts for purchases for the unit at the end of the tenancy totalling \$101.64. I find that the landlord is entitled to recover these out of pocket expenses from the tenant.

The landlord provided an invoice for the replacement of the washing machine door totalling \$237.44. Given that this item was in the rental unit prior to this tenancy and that the appearance of the exterior of the door may have been less important were it not for the sale of the property by the landlords, I find that the landlord may not have replaced the door at this time and that the door could have continued to function for a further time. Therefore, I find the landlord is entitled to a portion of the cost of the door from the tenant: \$50.00.

There are different types of damages an arbitrator may award. An arbitrator may award out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act* as the landlord has done with respect to purchases to make repairs and the washing machine door replacement. An arbitrator may also award an amount reflecting a general loss where it is not possible to place an actual value on the loss; “nominal damages” where there has been no significant loss or *no significant loss has been proven*, but they are an affirmation that there has been an infraction of a legal right.

I find that the landlord has proven that the tenant failed to honour the residential tenancy agreement and her obligations under the *Act* (including section 37) by failing to leave the rental unit clean and undamaged. Based on all of the evidence submitted, I find that the failure of the tenant to repair damage to the unit and thoroughly clean at the end of the tenancy warrants compensation. Therefore, I find that the landlord is entitled to a nominal damage award in the amount of \$350.00.

As the landlord was successful in her application, I find that she is entitled to recover the cost of the filing fee for this application.

As the total of the landlord’s monetary award is less than the amount of the tenant’s security deposit, I allow the landlord to retain **\$601.64** of the tenant’s security deposit and order the return of \$198.36 to the tenant.

Conclusion

The landlord is permitted to retain \$601.64 of the tenant's security deposit.

The landlord is required to return \$198.36 to the tenant.

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: October 18, 2016

Residential Tenancy Branch