



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF; MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement 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.

This hearing also addressed the tenant's cross application for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant, the tenant's agent and the tenant's two advocates (collectively the "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage?

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested? If not, is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The rental unit is located in the lower level of the landlord's personal residence. As per the submitted tenancy agreement and testimony of the parties, the tenancy began on April 12, 2015 on a fixed term until April 30, 2016. Rent in the amount of \$800.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$400.00 at the start of the tenancy. The tenant vacated the rental unit on April 2, 2016 without a mutual agreement to end tenancy.

The parties agreed that a written condition inspection report was completed at the start of tenancy. The parties also agreed that the landlord provided the tenant two opportunities to complete the final inspection with the notice of final opportunity given for April 30, 2016. The landlord conducted the final inspection report in the absence of the tenant but in the presence of a third party witness.

Landlord Claim and Tenant's Reply

The landlord seeks a total of \$506.15 in damages.

Cleaning

The landlord testified that the rental unit was not cleaned prior to the tenant's vacancy and required eight hours of professional cleaning. The landlord submitted an invoice from a cleaning company in the amount of \$253.05. The landlord seeks to recover this amount from the tenant.

In reply, the tenant contended that although she did not clean the rental unit immediately prior to vacancy, she did conduct a deep clean at the end of February and weekly cleanings thereafter. The tenant submitted photographs of the rental unit she testified were taken on April 2, 2016.

Carpet Cleaning

The landlord had the carpets shampooed and submitted an invoice in the amount of \$131.25. The landlord's monetary worksheet indicates he is seeking \$135.00 for carpet cleaning.

The tenant acknowledged that she did not shampoo or steam clean the carpets upon vacancy.

Window Blind Repair

The landlord testified that the control mechanism for the blind in the living room was broken by the tenant and required repair. The landlord testified that despite the blinds being under

warranty, the landlord seeks to recover his own out of pocket expense in relation to the repair of the broken blind. In total the landlord seeks \$38.10 for window blind repair.

The tenant recalled the blind opened and closed in a regular manner and testified to using the blind in a regular fashion. Any damage that may have occurred to the blind would have been the result of wear and tear.

Chips and Scratches

The landlord seeks to recover compensation for his labour and materials used in repairing chips and scratches to the bathroom floor trim and hallway. In total the landlord seeks \$80.00 in repair costs for chips and scratches.

The tenant acknowledged that one chip on the bathroom trim was a result of mopping and three chips in the bedroom were from a free standing fan falling off a ledge. The tenant testified that any other scratches or chips were a result of regular day to day living.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Tenant's Claims and Landlord Reply

The tenant seeks a total of \$2,186.13 in damages.

Cleanliness Rebate

The tenant seeks to recover the cleanliness rebate of \$50.00 per month from January to April 2016 for a total of \$200.00. The tenant explained that as per the addendum to the tenancy agreement she was entitled to a \$50.00 per month rebate on the condition that she kept the rental unit clean and did not waste electricity or water. The landlord conducted an inspection on October 11, 2015 and a second inspection on December 13, 2015. The tenant was awarded her full rebate following each of these completed inspections. The tenant seeks her final rebate for her last four months of tenancy. The tenant provided a copy of the tenancy agreement and addendum.

The landlord did not provide direct testimony in relation to the cleaning rebate, however amongst the landlord's evidence package are unsuccessful written attempts at negotiating an early end to tenancy most of which include a clause waiving the cleaning rebate.

Loss of Quiet Enjoyment

The tenant submitted a formula obtained from an Australian website and an overly complicated table to present her claim for quiet enjoyment. As per the tenant's testimony and documentary evidence the tenant seeks a total of \$1,986.13 for the loss of quiet enjoyment.

Clover Mites

The tenant indicated that upon moving into the rental unit she developed a rash which she attributed to a clover mite infestation. The infestation was reported to the landlord and on May 14, 2015 the rental unit was exterminated. The tenant contended that she did not stay in the rental unit for four days following the extermination due to the overwhelming fumes.

In October 2015, the clover mites returned. The tenant reported the infestation to the landlord and the rental unit was exterminated on October 10, 2015.

The tenant seeks compensation for the time she spent killing mites, placing mite deterrents and meeting with the landlord. She also seeks compensation for the skin irritations she developed and the loss of use of the rental unit during both exterminations.

In response, the landlord reported he initially treated the mites himself with spray purchased from a local retailer. The landlord submitted two receipts for insecticide, each dated May 9, 2015. The landlord submitted an invoice from a pest control company dated May 14, 2015 for the treatment of mites.

Privacy

Overall the tenant complained that the landlord looked at her mail, looked through her windows, eavesdropped on her personal conversations and installed security cameras that inhibited her privacy. The tenant seeks compensation for her feelings of uncomfortableness and anxiety.

The landlord attests that he periodically inspected the windows from the outside as he previously had a water issue with one of the windows that resulted in a warranty claim. The landlord submitted emails from the home warranty claim company dated October 2013. The landlord denies eavesdropping and calls this allegation absurd. The landlord acknowledged he had cameras installed on the outside of the rental unit as a preventative security measure.

Access to Services

The tenant explained that due to ongoing issues with accessing the laundry and in receiving her mail she began doing laundry elsewhere and obtained a PO Box in January of 2016. The tenant seeks compensation for this inconvenience.

It is the landlord's position that he did not restrict or terminate the laundry or mail service, the tenant chose to obtain services elsewhere. The landlord explained that the laundry facilities are shared between the tenant and landlord with the facilities located on the landlord's side. Access to laundry was discussed at the start of tenancy and the tenant agreed she would phone the landlord when access was required. The landlord acknowledged there were a few occasions in which the tenant's request to access

laundry could not be accommodated. The landlord indicated that it was not until February 25, 2016 that he became aware that the tenant was unhappy with the prearranged method of laundry access. On this date the tenant informed the landlord she was unhappy with the arrangement and had been doing laundry elsewhere since January 2016.

In regards to the mail, the landlord indicated that the parties had agreed the tenant could use the landlord's mailbox but the tenant would not be issued a key for it. The parties agreed that the landlord would retrieve the tenant's mail from his mailbox and slide it under the rental unit door. The landlord indicated this method of mail delivery was used and he was unaware the tenant had an issue with the mail service until conflict developed over the end of tenancy.

Health

The tenant seeks compensation for the extreme anxiety, loss of appetite, inability to sleep, difficulty being at home and trouble working she has had as a result of the ongoing conflict with landlord. The tenant also seeks compensation for the landlord's belligerent, rude, illogical and intimidating behaviour.

The landlord contended that the tenant's claim is exaggerated and his behaviour was not disrespectful.

The tenant also seeks to recover the \$100.00 filing fee for this application from the landlord.

Administrative penalties

The tenant requests the landlord be charged an administrative penalty in the amount of \$5,000.00 for contravening the *Act*.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Landlord

Section 37 of the *Act*, establishes 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.

Residential Tenancy Policy Guideline # 1 “Landlord & Tenant – Responsibility for Residential Premises,” defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Cleaning

Based on the tenant’s admission that she did not clean the rental unit immediately prior to vacancy I find it probable that some cleaning was needed. However, upon review of the submitted photographs, I do not find eight hours of cleaning was required to bring the rental unit to a state of reasonable cleanliness as required by section 37 of the Act. For this reason I award the landlord a nominal award in the amount of \$100.00 for cleaning.

Carpet Cleaning

Residential Tenancy Policy Guideline # 1 “Landlord & Tenant – Responsibility for Residential Premises,” establishes that typically after a tenancy of one year the tenant will be held responsible for steam cleaning or shampooing the carpets.

In this case, the fixed term tenancy of one year was ended 28 days early by the tenant when she vacated the rental unit on April 2, 2016. Based on the tenant’s admission that she did not steam clean or shampoo the carpet I find the landlord is entitled to recover the steam cleaning cost in the receipt amount of \$131.25.

Window Blind Repair

The parties provided conflicting testimony in relation to the damaged blind. The landlord testified that the damage was a result of the tenant’s misuse whereas the tenant testified any damage would have been a result of wear and tear. I find the landlord has provided insufficient evidence to substantiate that the tenant damaged or misused the blind. Therefore I find the damage was a result of reasonable wear and tear and dismiss this portion of the landlord’s claim.

Chips and Scratches

As per the Residential Tenancy Policy Guideline # 1 “Landlord & Tenant – Responsibility for Residential Premises,” tenants are responsible for all deliberate or negligent damage to the walls.

I find the landlord has provided insufficient evidence to prove the tenant deliberately or negligently damaged the walls. Rather, I find any wall damage as described by the parties occurred as a result of the tenant using the premises in a reasonable fashion. Accordingly I attribute any chips or scratches to wear and tear and dismiss this portion of the landlord’s claim.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$331.25.

Tenant

Cleanliness Rebate

The cleaning rebate, part of an additional term listed in the addendum to the tenancy agreement states the following;

“As a matter of privilege to the tenant and at the sole discretion of the landlord, a \$50.00 per month gratuity, for a total of \$300.00 (i.e. \$50.00 x 6 months), will be paid after the tenant has passed a condition inspection for cleanliness and the tenant has continually shown to practice the principle of no wastage of electricity and water. The condition inspection will be conducted every six months. The judging of no wastage of electricity and water will be on going for the past six months. This term is a privilege to the tenant and therefore will not supersede any legal rights accorded to the landlord by the Residential Tenancy Act. This promotional event can be terminated by the landlord any time after serving a 7 days’ notice in writing without affecting the integrity of this residential tenancy agreement”.

[Reproduced as written]

In accordance with the landlord’s clause that this gratuity was at the sole discretion of the landlord I find the landlord is not obligated to pay the cleanliness rebate from January to April 2016 and therefore dismiss this portion of the tenant’s claim.

Loss of Quiet Enjoyment

As per section 28 of the *Act* a tenant’s entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 “Right to Quiet Enjoyment” a tenant’s right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

Clover Mites

In the tenant’s evidence package she estimated she advised the landlord of the infestation sometime in April 2015 and prior to April 19, 2015 but provides insufficient evidence to substantiate this. In any event, the evidence shows that at some point prior to May 9, 2015 the landlord was made aware of the infestation. By way of purchasing insecticides and hiring an exterminator, I find the landlord took reasonable steps to address the issue and accordingly I find the landlord did not breach the tenant’s right to quiet enjoyment. For this reason I dismiss this portion of the tenant’s claim for compensation.

Privacy

The tenant alleged the landlord directly interfered with her privacy by looking at her mail, looking through her windows, eavesdropping on her personal conversations and installing security cameras.

The parties agreed that for some duration of the tenancy the landlord had delivered the tenant's mail. Therefore I find it is a reasonable expectation that the landlord would view incoming mail. There is no evidence to suggest the landlord opened the tenant's mail. In relation to the windows, I find it plausible that after experiencing a window warranty claim the landlord would be increasingly diligent in monitoring the windows. The landlord denied eavesdropping and the tenant has failed to satisfy me on a balance of probabilities that this occurred. The landlord, who resides above the rental unit, has the authority to install cameras on the exterior of the unit for security purposes. Overall I find the tenant has failed to establish the landlord breached the tenant's right to quiet enjoyment in relation to privacy. Therefore I dismiss this portion of the tenant's claim.

Access to Services

Section 27 of the *Act* prohibits a landlord from terminating or restricting a service or facility unless the tenant is given sufficient notice and rent is reduced accordingly. Upon review of the signed tenancy agreement it becomes apparent that access to laundry is included in the rent and therefore constitutes a material term of the tenancy agreement.

I find the landlord did not terminate or restrict the material term of laundry access. Rather I find the tenant was unhappy with the agreed upon method of access and has provided insufficient evidence to establish when she communicated this to the landlord. I find the tenant did not attempt to mitigate any loss by negotiating an alternate method of access until March 22, 2016 at which time through written correspondence she demanded the landlord provide a key no later than March 31, 2016. For these reasons, I dismiss this portion of the tenant's claim for compensation.

As per Residential Tenancy Policy Guideline #6 "Landlord & Tenant – Responsibility for Residential Premises" the landlord must give the tenant a key for the mailbox. Although the landlord did not give the tenant a key to the mailbox, I find the tenant failed to mitigate her loss during the tenancy by filing a claim with the Residential Tenancy Branch for an order for the landlord to comply. For this reason I dismiss this portion of the tenant's claim for compensation.

Health

The tenant's health effects due to the ongoing conflict with the landlord cannot form the basis of a claim for unreasonable disturbance or significant interference infringing on the tenant's right to quiet enjoyment. In any event, the tenant has supplied no medical evidence to support such an alleged impact on her health. Although the tenant has provided witness statements some of which attest to the landlord's rude behavior during the time the parties were attempting to negotiate an early end to tenancy, I find this conduct does not amount to unreasonable

disturbance or significant interference infringing on the tenant's right to quiet enjoyment. I dismiss this portion of the tenant's claim.

Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish that joint move-in and move-out condition inspections must be conducted and that the landlord must offer the tenant at least two opportunities for the final inspection. The right of a tenant to the return of the security deposit is extinguished if the tenant does not participate in either of the offered opportunities.

Based on the tenant's admission that she did not participate in the final inspection despite being offered two opportunities to do so, I find that the tenant's entitlement to the return of the security deposit is extinguished. For this reason, I dismiss this portion of the tenant's claim without leave to reapply.

Administrative penalties

At the hearing, the tenant requested that an administrative penalty, pursuant to section 94.1 of the *Act*, be levied against the landlord. I do not have the authority to administer administrative penalties against the landlord, only the Director of the Residential Tenancy Branch does. Therefore, the tenant must apply for such a penalty through the required procedure as outlined in the *Act*.

As the tenant was unsuccessful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

As the tenant has extinguished her right to the return of the security deposit, and the landlord's monetary award in the amount of \$331.25 is less than the security deposit, I allow the landlord to retain the security deposit in its entirety.

Conclusion

I allow the landlord to retain the security deposit in the amount of \$400.00.

I dismiss the tenant's entire application without leave to reapply.

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 11, 2016

Residential Tenancy Branch

