



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Landlords entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on April 15, 2016 and ended on January 31, 2017. The Tenants provided their forwarding address on either February 7 or 10, 2017. Rent of \$1,295.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$647.50 as a security deposit and \$647.50 as a pet deposit. The Parties mutually conducted a move in inspection with completed report copied to the Tenants.

The Landlord states that the Tenants were called on February 1, 2017 to arrange a move-out inspection but that the Tenants did not answer the calls and the Landlord did not leave a message. The Landlord states that a notice to conduct a move-out inspection was left on the door of the unit on February 1, 2017 and that the Tenants did not attend the inspection. The Landlord states that during the tenancy the Tenants were communicated with by text and email. The Landlord states that no offers to conduct an inspection were made by text or email. The Tenant states that no offer for a move-out inspection was made by the Landlord.

The Landlord states that the Tenants left the carpet unclean. The Landlord states that the Landlords steam cleaned the carpets with a borrowed machine that did not cost them any money. The Landlord did not provide an invoice for their labour. The Landlord claims the amount that would normally be charged by a company in the amount of \$120.00 plus tax. The Tenants do not dispute that the carpets were not steam cleaned at the end of the tenancy.

The Landlord states that the Tenants left the unit unclean and that it took two days for them to clean the unit. The Landlord states that a cleaning company was not hired and no costs were incurred. The Landlord did not provide an invoice for their labour and claims the amount that would normally be charged by a company in the amount of \$256.00 plus tax. The Landlord provided photos of the unit. The Tenants state that, with the exception of the windows, they left the unit cleaned to a high standard. The Tenants provided photos of the unit taken at move-out.

The Landlord states that the Tenants abandoned the unit. The Landlord claims unpaid rent of \$1,295.00. The Landlord confirms that the Tenants were served in person on January 28, 2017 with a one month notice to end tenancy setting an effective move out date of January 31, 2017. The Landlord states that the unit was advertised on February 1, 2017 for \$1,400.00 per month. The Tenants submit in their materials that they

complied with the notice to end tenancy by moving out of the unit before the effective date as indicated on the notice.

The Landlord states that the Tenants tried to make repairs to the tub surround and left the tub damaged. The Landlord claims \$43.67 for the costs of the repair materials. The Landlord provides a receipt for the materials. The Tenant states that the tub surround sealant was a bad job originally and that during the tenancy it started coming off so the Tenants made the repairs without informing the Landlord.

The Landlord states that the Tenants left blinds damaged and claims an estimated \$15.88 plus tax for their replacement. The Landlord states that the blinds were replaced but that the bill for the replacement costs was not provided. The Tenants state that one blind had one small dent and submit that the Landlord has not proven that any costs were incurred to replace any blinds.

Analysis

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.

Section 47(5) of the Act provides that if a tenant who has received a notice to end tenancy for cause does not make an application to dispute the notice the tenant must vacate the rental unit by the effective date of the notice. As the tenancy was ended by the Landlord through the notice to end tenancy and as the Tenants moved out by the effective date given by the Landlord I find that the Landlord has not substantiated that the Tenants failed to comply with the tenancy agreement or Act by moving out of the

unit as done. The Landlord has therefore not substantiated that the Tenants abandoned the unit or caused any lost rental income. I also find that as the tenancy ended on January 2017 in compliance with the Landlord's notice to end tenancy the Tenants were not obliged to pay rent for February 2017. Even if the Tenants were found to have breached the Act or tenancy agreement, by advertising the unit for more rent than was being claimed I find that the Landlords acted contrary to the requirement to reduce the costs being claimed. I therefore dismiss the Landlord's claim for rental monies.

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. Based on the undisputed evidence that the carpet was not cleaned at the end of the tenancy and considering that the Tenants had pets I find that the Landlord has substantiated on a balance of probabilities that the carpets were not left reasonably clean. As the Landlord did not incur the costs claimed and as the Landlord provided no invoice for its own labour I find that the Landlord is only entitled to a nominal amount of **\$50.00** for the breach by the Tenants.

Given the photos and oral evidence of both Parties I find that the Landlords' evidence of time spent in cleaning the unit to be exaggerated. Given the lack of an invoice for their time and as the costs claimed were not incurred I find that the Landlord has not substantiated any costs and I dismiss this claim.

Given the undisputed evidence that the Tenant acted to make repairs without the permission of the Landlord and considering the photos of the tub surround and bathroom I find that the Landlord has substantiated that the Tenant acted negligently and left the tub with damages. Given the receipt showing costs that were incurred I find that the Landlord has substantiated its claim for **\$43.67**.

As no receipts were provided for the blinds I find that the Landlord has failed to substantiate that the costs claimed were incurred and I dismiss this claim.

As the Landlord's application has met with minimal success I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$93.67** (43.67 + 50.00) from the combined security and pet deposit plus zero interest of **\$1,295.00** leaves **\$1,201.33** owed to the Tenants. I order the Landlord to pay this amount to the Tenants forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,201.33**. 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 20, 2017

Residential Tenancy Branch