Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application made May 24, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38;
3. A Monetary Order for compensation - Section 67;
4. A Monetary Order for unpaid rent - 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.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on September 1, 2015. At the outset of the tenancy the Landlord collected $775.00 as a security deposit. No move-in or move-out inspection was offered by the Landlord.

The Landlord states that rent of $1,650.00 is payable on the first day of each month, that the Tenant owes rental arrears from February 2018 of $250.00 and that the Tenant failed to pay any rent for May 2018. The Landlord states that the Tenant never informed the Landlord when the Tenant moved out of the unit and that the Tenant

moved out either May 8 or 9, 2018. The Landlord states that the Tenant provided her forwarding address on a note left in the unit and discovered by the Landlord on May 14, 2018.

The Landlord states that at the beginning of 2018 the Tenant wanted to rent another room in the house and agreed to pay $100.00 for this extra room. The Landlord states that the tenancy agreement rental amount was written over to reflect this agreement for rent of $1,650.00. The Landlord states that the Tenant started paying the increased rent of $1,650.00 at the start of 2018.

The Landlord states that the Tenant's unit is contained in a house with a second upper suite that was rented by the Tenant's brother for $650.00 per month. The Landlord states that the Tenant's brother was also moving out and that the whole house was advertised sometime in the beginning of June 2018 for $2,850.00. The Landlord states that a new tenant was obtained for the last 9 days of June 2018. The Landlord claims $250.00 for February 2018 rent and $1,650.00 for May 2018 rent.

The Tenant states that the unit was empty on May 9, 2018. The Tenant states that she provided her forwarding address by leaving it on the fridge inside the rental unit and by sending it to the Landlord by express post. The Tenant states that the Landlord signed for its delivery by express post on May 10, 2018. The Tenant provides the tracking number for this delivery.

The Tenant states that the tenancy agreement provides that rent of $1,550.00 is payable and that the rental amount set out on the Landlord's copy provided as evidence has been altered to show a wrong amount of $1,650.00. The Tenant provides a copy of the tenancy agreement that the Tenant signed. The Tenant states that she never agreed to pay any extra rent and that she paid $1,650.00 for March and April 2018 as the Landlord had served the Tenant with a 10 day notice to end tenancy for unpaid rent for February 2018 and did not want to risk getting evicted. The Tenant states that she

did not became aware of the tenancy agreement being changed until the previous hearing on May 1, 2018. The Tenant also states that she paid the $1,650.00 as the Landlord had told the Tenant at the beginning of 2018 that the rent was going up. The Tenant also states that the Landlord gave the Tenant an option to rent an extra room for storage or the Landlord would use the room. The Tenant states that she then agreed to rent the room for $100.00 but does not know when it was due. The Tenant states that she only started paying that much in March 2018 because of the eviction notice. The Tenant states that the Landlord placed an ad online to rent the unit for June 1, 2018 with no utilities included in the rent. The Tenant states that utilities were included in her rent. The Tenant states that she remained in the unit until 2 days after she received her Review Consideration Decision.

The Landlord states that the Tenant's brother rented a separate suite in the house and also failed to pay rent for May 2018. The Landlord claims $650.00 as the brother's unpaid rent. The Landlord states that the rental amount was negotiated by the Landlord with the brother.

The Landlord states that the Tenant damaged the bathroom tiles by painting over the grout, damaged a cedar wall by painting over a portion of the wall and damaged a vanity by painting over the vanity. The Landlord claims $490.00 to restore the tile, $350.00 to restore the cedar wall and $750.00 to replace or repaint the vanity. The Landlord provides an estimate for these sums and states that no repairs have been made. The Landlord states that the new tenants agreed that the Landlord could make the repairs after the conclusion of this hearing. The Landlord confirms that the new tenants were not given any rental reduction for these damaged items. The Landlord states that the tiles were new in 2014 and that the vanity and wood flooring was original to the house. The Landlord is unable to state how old the house is and states that it was purchased by the Landlord in 2010.

The Tenant states that these damages were present when the Tenant moved into the unit and that the Tenant was aware of these damages prior to the start of her tenancy as the previous tenants were clients of the Tenant's cleaning business. The Tenant states that the previous tenancy was 5 years in length. The Tenant states that the vanity is pressboard and not oak and is at least 70 years old. The Tenant also states that at the onset of the tenancy the rooms were all different colors and that the Landlord's husband who dealt with the Tenant during the tenancy told the Tenant that she could "redo the whole house" and could paint anything. The Tenant states that as the tile was also floor tile and that as the paint was fading the Tenant applied a clear coat over it to preserve the appearance. The Landlord agrees that her husband dealt with the tenancy. The Landlord states that she was told by her husband that he only gave the Tenant permission to paint the living room wall.

The Landlord states that the Tenant put laminate flooring on the floor without permission of the Landlord. The Landlord claims an estimated $700.00 to remove the laminate and $400.00 to take it to the dump. The Landlord states that hardwood floors were under the laminate. The Landlord states that no repairs have been made and no costs incurred for the removal of the laminate. The Landlord states that the Tenant was told to return the walls and flooring to the original condition sometime during the summer of 2017. The Tenant states that the Landlord was never in the unit until close to 2018 and that the original hardwood was old and rotten so the Tenant at her own cost started to refinish the flooring with the laminate. The Tenant submits that she was unable to complete the flooring as the Landlord obtained an order of possession. The Tenant states that the Landlord's husband saw the new laminate that was first placed in the bedroom and told the Tenant that it was a good job. The Tenant states that she was never told to return anything to the original shape.

The Landlord states that although there was no move-out inspection from the previous tenancy before the Tenant moved into the unit there were no pre-existing damages to the walls or floors.

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. The Landlord can only bring claims against a tenant for liabilities under a tenancy agreement, whether verbal or written. As the brother had a different rental unit and a separate tenancy agreement, I find that the Landlord has not substantiated that the Tenant is liable for her brother's rent. I therefore dismiss this claim against the Tenant.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence that $250.00 was unpaid from February 2018 rent I find that the Landlord has substantiated an entitlement to **$250.00**. As the Landlord was not certain of the date that the Tenant moved out of the unit and based on the Tenant's evidence that the Tenant moved out of the unit on May 9, 2018 after unsuccessfully disputing the Landlord's 10 day notice to end the tenancy for unpaid rent, I find that the Landlord has substantiated that the Tenant owes rent for the period May 1 to 9, 2018 inclusive.

The Tenant gave inconsistent evidence in relation to the rental of the extra room. I consider that the Tenant was also evasive while giving this evidence. As a result I prefer the Landlord's consistent and straightforward evidence and find that the Parties agreed that the Tenant would pay additional rent for additional space and that as of January 1, 2018 the rent payable was $1,650.00. The Tenant therefore owes unpaid rent for May 2018 at a per diem amount of $53.23 ($1,650.00/31 = $53.23) x 9 days for a total amount of **$479.07**.

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 and that costs for

the damage or loss have been incurred or established. As the Landlord advertised the unit for a greater amount of rent than was payable by the Tenant I find that the Landlord failed to take any reasonable steps to mitigate any lost rental income for the remaining days of the month in May 2018 and I dismiss that amount.

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 Tenant's plausible evidence of pre-existing damage and the lack of any supporting evidence from the Landlord on the state of the unit at move-in, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant damaged the tile, cedar wall or the vanity. I therefore dismiss the claim for these items. Given the undisputed evidence that the Landlord incurred no costs to remove any garbage and the Tenant's plausible evidence that no garbage was left at the end of the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that it incurred the costs being claimed to remove garbage. I therefore dismiss the claim for the garbage removal. As the Landlord did not incur the costs claimed to remove the laminate I find that the Landlord has not substantiated an entitlement to the amount claimed. However as there is no evidence that the Tenant had permission to lay the laminate over the original flooring claims I find that the Landlord has substantiated that the Tenant breached the Act in relation to the laminate and that the Landlord is therefore entitled to nominal award of **$100.00** for this breach.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$929.07**.

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. The Tenant gave evidence of sending the forwarding address by express post on May 10, 2018 however the tracking evidence provided by the Tenant indicates that the item was sent in October 2018. As such I find that this does not substantiate that the Tenant provided her address to the Landlord on May10, 2018. I therefore accept the Landlord's evidence that the Landlord received the forwarding address on May 14, 2018. As the Landlord made it application within 15 days of this date I find that the Tenant is not entitled to return of double the security deposit. Deducting the security deposit plus zero interest of **$775.00** held by the Landlord from the Landlord's entitlement of **$929.07** leaves **$154.07** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of $775.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **$154.07**. 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: November 07, 2018

Residential Tenancy Branch