



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC MNR FF

Introduction

This proceeding dealt with the landlord's application dated May 10, 2016 for a Monetary Order and in part to retain the security deposit in partial satisfaction of their monetary claim. Both parties were represented in the teleconference hearings. This matter was first convened on November 22, 2016 and reconvened to this date to allow exchange of evidence. Both parties appeared for both hearing dates. Both parties acknowledged having the evidence of the other before them. The parties were provided opportunity to mutually resolve their dispute to no avail. The hearing proceeded on the merits of the landlord's application and the relevant evidence. Only evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began November 01, 2014 as a written tenancy agreement for a partially furnished rental unit, and has since ended. Rent in the amount of \$1775.00 was payable in advance on the last day in the month before each month. The parties agree that rent did not include water, electricity, heat not cable service. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$887.50 which they retain in trust. The tenant vacated the rental unit pursuant to a 10 day notice to end dated May 03, 2016 with an effective date of May 14, 2016.

The parties disagree in respect to a *mutual condition inspection* of the unit at the start of the tenancy. The landlord provided a condition inspection report (CIR) dated November 01, 2014 which they claim was completed by their agent and is purportedly signed by the tenant, but absent of the landlord's signature. The tenant denied participating in the claimed *move in* inspection and did not receive a copy of the claimed inspection. The tenant denied that the signature of the landlord's report is theirs. None the less, it must be noted that the inspection results indicate no deficiencies, with all areas as "good": each with a check mark. The parties disagree in respect to a *mutual condition inspection* of the unit at the end of the tenancy. The parties agree they conducted a *condition inspection* on May 14, 2016 at which the landlord's agent represented the landlord. The parties agree all areas of the CIR are marked as "good": each with a check mark. In contrast however, the landlord's copy contains additions of 10 'codes': 9 for missing light bulbs and 1 for a stained mattress. The tenant's copy is absent of these inclusions. Both parties' copies state that the tenant agrees to the landlord retaining all of their security deposit.

Landlord's application

The landlord claims the tenant did not pay the \$1775.00 of rent for May 2016, with which the tenant agrees.

The landlord claims late fees for the unpaid rent in the amount of \$180.00, comprised of an initial \$50.00 and successive \$10.00 per day to the end of the tenancy, with which the tenant disagrees. The landlord highlighted the amount are stated in the addendum to the tenancy agreement.

The landlord claims for 'water' utility charges from the outset of the tenancy as charged by the City within their City utilities group. The landlord highlighted that water utility is not included in rent. The landlord claims the amount of \$1319.13 for water, however on review of the evidence with the landlord they were unable to provide evidence of how they arrived at their claim. The tenant disputed the landlord's amount however agreed

they may be responsible for a portion of the landlord's claim for water, but were unable to determine the amount from the landlord's evidence.

The landlord claims \$326.74 for 23 light bulbs which they claim their agent informed them were missing according to their agent's move out inspection disputed by the tenant. Again, the tenant testified that all light bulbs were in place at the end of the tenancy and all were functional. The tenant testified that out of an abundance of caution they could agree that one light bulb may have been burnt out when tested, however with which they doubted. Again, both parties provided contrasting evidence in their respective move out condition inspection reports. The landlord also provided an undated letter sent to the landlord by their agent(s) as an "explanation to the landlord" of the CIR. The letter stated that the, "*(Agent) went through each room with the tenants and I was checking to see if they cleaned the fridge, stove, microwave etc. They did not clean the house nor did they carpet clean. I also turned on all lights and there were 23 lights out in the townhouse*" – as written.

The landlord claims that their cleaner turned on the canister vacuum cleaner assigned to the tenancy and it did not function. The landlord testified the tenant had previously e-mailed them to say the vacuum cleaner was not working. The tenant agreed they previously informed the landlord it was not working, however the tenant cleaned out the vacuum cleaner and was able to make it work again. The landlord claims \$200.00 for a replacement unit. The tenant disputed the landlord's claim. They testified the unit functioned properly and they did not damage the vacuum cleaner.

The landlord claims \$300.00 for a cleaner and \$44.62 for additional cleaning products. The landlord provided a narrative from the contracted cleaner stating the rental unit was unclean and, "ended up cleaning for 3 day" – as written. The tenant disagreed with the landlord's claim in all respects. The tenant stated that the agent that performed the condition inspection told them that everything was fine and was clean and so they signed the CIR.

The landlord claims that the tenant stained the mattress of the master bedroom and as a result, they claim the warranty for the mattress is void. The landlord seeks \$1261.67 for a replacement mattress. The landlord testified they provided 3 photo images of the mattress condition which depicted as black rectangles in their evidence and the landlord did not provide decipherable images in their place. The landlord also highlighted that the mattress was coded as stained on the move out CIR, which again, is not itemized on the tenant's copy of the CIR. The tenant denied they in any way compromised the mattress. They testified they utilized a mattress cover as instructed and provided by the landlord and that at the end of the tenancy the mattress was not stained as asserted by the landlord.

Analysis

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims on balance of probabilities.

On preponderance of the evidence before me I find as follows.

I find the tenant did not pay the rent of \$1775.00 for May 2016 and owes this amount. Therefore I grant the landlord **\$1775.00**.

I find that **Section 7** of the Act provides as follows in respect to the landlord's claims for damage and loss.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists,*

2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the losses claimed.

The following is also relevant to the landlord's monetary claims and must be noted. Residential Tenancy Regulation states as follows.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In respect to the landlord's claim for the late payment of rent Residential Tenancy Regulation states as follows, in relevant part, respecting permitted fees for late payment of rent.

Non-refundable fees charged by landlord

- 7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than **\$25** for the return of a tenant's cheque by a financial institution or for late payment of rent;

I find the landlord's term in the agreement respecting late payment of rent is unconscionable and therefore unenforceable. As a result the landlord's claim for late fees is dismissed.

In respect to the landlord's claim for the water utility I find the landlord has not provided discernible evidence allowing an Arbitrator to conclude if the applicant's request is valid. However, in the absence of sufficient evidence I accept the tenant's testimony that they were responsible for the water utility but are not sure of the amount. As a result, I grant the landlord the set amount of **\$300.00** for the water utility, without leave to reapply.

In respect to the landlord's claim for 23 light bulbs, cleaning and cleaning products, and a claimed irreparably damaged mattress, I find the following. I find the landlord's CIR fails to identify in any way that the rental unit was left in an unclean condition; however, the landlord then provided 2 statements from their agent and a cleaner contradicting the validity of the CIR signed by both parties at the time of inspection. I further find that neither of these statements mentions a mattress issue. Additionally, I find that I am unable to reconcile the landlord's version of the CIR in that despite their copy of the report indicating missing light bulbs and a stained mattress, these items are indicated on the CIR with a check mark as "good". I find the landlord's CIR and associated evidence respecting the condition of the unit at the end of the tenancy does not make sense and I assign it limited evidentiary weight in contrast to the tenant's version of the CIR. I find the landlord has not sufficiently met the test established by Section 7 of the Act and as a result I dismiss these portions of the landlord's application.

I also find that the landlord has not provided sufficient evidence on a balance of probabilities proving the tenant is responsible for damaging the vacuum cleaner. I prefer the evidence of the tenant the vacuum cleaner likely may have failed due to normal wear and tear as it had previously faltered during the tenancy as was reported to the landlord. However, it was brought back to working condition by the tenant and the tenant testified it was operating normally at the tenancy's end. As a result, I dismiss this portion of the landlord's claim.

As the landlord was partially successful in their application they are entitled to recover their filing fee. The security deposit will be offset from the award made herein.

Calculation for Monetary Order is as follows:

Unpaid rent for May 2016	\$1775.00
Water utility	300.00
Landlord's filing fee	\$100.00
<i>less tenant's security deposit: in trust</i>	<i>- \$887.50</i>
Monetary Order for landlord	\$1287.50

I Order that the landlord may retain the security deposit of \$887.50 in partial satisfaction of their award, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$1287.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application, in part, has been granted and the balance dismissed.

This Decision is final and binding on both parties.

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: January 10, 2017

Residential Tenancy Branch