



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing, but did not testify. The landlord's agent (caretaker) presented evidence on behalf of the landlord. Both named tenants attended the conference call hearing.

The parties gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

The landlord provided an evidence package in advance of the hearing and provided same to the tenants. All information and evidence has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy began on September 1, 2009 and was to expire on August 31, 2010. Rent in the amount of \$1,045.00 was payable in advance on the 1st day of each month, \$60.00 of which is for parking, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$522.50. The rental unit is one of 10 units in a building all with different floor plans.

The undisputed evidence of the parties is that one of the named tenants was a friend of the parents of the other named tenant. He acted as agent for his friends' son who was to attend university near the rental property and would be moving from Ontario for that purpose. The tenancy agreement was signed on behalf of the student by the other named tenant, who never did reside in the rental unit, and the landlord was aware of that arrangement. The "friend" testified that he believed the landlord would prepare a new tenancy agreement once the real tenant arrived from Ontario, but that didn't happen.

The landlord's agent testified that on April 1, 2010 the tenant gave written notice to vacate the rental unit and agreed to pay liquidated damages for moving prior to the expiry of the fixed term. The Tenancy Agreement, a copy of which was provided in advance of the hearing, provided for liquidated damages in the amount of \$545.00 if the tenant ends the fixed term tenancy prior to its expiry. It further states that "Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property."

The landlord's agent further testified that the tenant paid \$1,578.50, being \$48.50 for damages specified in the move-out condition inspection report, \$545.00 for liquidated damages, and \$985.00 for rent for the month of May, 2010, which was the rental amount less the \$60.00 parking fee. On May 6, 2010, the tenant put a stop-payment on the cheque. On May 10, 2010, the tenant paid the landlord \$146.00 to cover the carpet

cleaning as indicated on the move-out condition inspection report. The carpet was new in 1997, and the landlord is claiming the actual cleaning cost of \$141.75.

The landlord's agent also testified that in October, 2009 he noticed the tenant's car was leaking oil in the driveway and asked the tenant to repair it. He mentioned it to the tenant again when he paid the rent in December. The landlord is claiming \$137.19 for cleaning the driveway.

The agent for the landlord further testified that a bi-fold door was broken by the tenant; a pin was split at the top and he was paid \$15.00 by the landlord (owner) to repair it.

The landlord is also claiming \$47.25 for cleaning 5 blinds due to the tenant smoking in the rental unit, as well as \$202.50 for cleaning walls, ceiling and windows. The landlord's agent stated that he was in the unit in March, 2010 replacing the smoke alarms and did not notice any indication that the tenant had smoked in the unit.

The landlord is also claiming \$119.00 for a computer repair that the landlord's agent paid for when the tenant was not able to use his computer. The landlord's agent had called a technician on behalf of the tenant, and he got the bill in October and gave it to the tenant, but the tenant did not reimburse him for that cost.

The tenant testified that during the move-out condition inspection, the landlord's agent fell out of a loft breaking the tenant's vacuum cleaner. The agent refused to deal with it, would not answer his door, and the police were called. The police did not attend, but the tenant feels he should be reimbursed, and has dealt with a dishonest landlord.

The tenant further testified that during the move-in condition inspection, no inspection was done on the driveway. Further, the landlord's agent had hired a welder who parked his truck in the tenant's driveway. The tenant further testified that his vehicle is in good condition, and he is not responsible for the oil stains in the driveway.

The tenant further testified that he did not get on his knees during the move-in condition inspection, and feels that the landlord has inflated the charges claimed against him. He stated that he did not smoke in the unit, but his apartment was located above the front entrance of the building and 2 or 3 people smoked there regularly including the landlord's agent. The tenant kept his windows open.

The tenant agrees that the carpet needed cleaning, but the invoice provided is \$141.75 and he paid the landlord \$146.00 for that service. He further stated that he had been overcharged on the move-out condition inspection report in comparison to the invoices provided for this hearing. Further, he submitted that the pin on the bi-fold door is normal wear and tear.

Analysis

Firstly, dealing with the liquidated damages, I find that the tenant is responsible for what he agreed to in the contract, being a pre-estimate of the landlord's costs of re-renting the rental unit due to the tenant vacating the rental unit before the expiry of the fixed term.

I also find that the landlord's Security Deposit Statement on the move-out condition inspection is an estimate of costs associated with damages he claimed, and cannot be considered to be the actual costs. Further, in order to be successful in a claim for damages, the onus is on the claiming party to prove that:

1. The damage or loss exists;
2. That the damage or loss exists as a result of the opposing party failing to comply with the tenancy agreement or the *Residential Tenancy Act*;
3. The amount of the damage or loss;
4. What efforts the claiming party made to mitigate, or reduce the loss claimed.

In the circumstances, I find that the landlord has set out a claim for \$141.75 for carpet cleaning and \$119.00 for computer repair.

I further find that the landlord has failed to establish a claim for cleaning blinds, walls, ceiling and windows. He stated that 5 sets of blinds needed cleaning, but only 2 sets of blinds appear on the condition inspections. I accept the evidence of the tenant that he did not get on his knees during the move-in inspection to examine the areas photographed by the landlord for which he claims cleaning costs. Further, the tenant does not have an obligation to leave a unit in the pristine condition that the landlord may want the unit to be left in; the tenant's obligation is to leave the unit reasonably clean. I also find that the pin in the bi-fold door is reasonable wear and tear, for which the tenant is not responsible. I decline to award any amount to the landlord for cleaning oil spills in the driveway. No notes appear on the condition inspection reports with respect to the condition of the driveway at move-in or move-out, and I accept the evidence of the tenant that the landlord's agent permitted a tradesperson to park his vehicle in that driveway.

The landlord is currently in possession of \$146.00 from the tenant, as well as \$522.50 for the security deposit held in trust, for a total of \$668.50. The landlord is entitled to recover from the tenant the amount of \$545.00 in liquidated damages, \$141.75 for carpet cleaning, and \$119.00 for computer repair. I also find that the landlord ought to have reimbursed the tenant for the cost of the vacuum cleaner damaged by the landlord's agent, and I find that \$100.00 is fair in the circumstances to be deducted from the amount due to the landlord.

With respect to the obligation of either named tenant, I have examined the tenancy agreement, and I find that the agreement existed between the landlord and one tenant. The second named tenant in this dispute is not named as a tenant in the Tenancy Agreement, but he signed it on behalf of the first named tenant. Therefore, there is no obligation on behalf of the second named tenant.

Conclusion

For the reasons set out above, the landlord's application against the 2nd named tenant in the Landlord's Application for Dispute Resolution is hereby dismissed without leave to reapply.

The landlord has established a claim for \$705.75 in damages against the second named tenant. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$522.50 in addition to the \$146.00 already paid by that tenant in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$87.25. 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: October 14, 2010.

Dispute Resolution Officer