



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants applied for the return of all or part of the security deposit and pet damage deposit, and to recover the filing fee for the Application.

The Landlord applied for monetary compensation under the Act or tenancy agreement, for damage and cleaning in the rental unit, to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee for the Application.

At all relevant times during the tenancy and during the hearing the Landlord was represented by an Agent.

Both parties appeared at the hearing, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that both parties submitted some evidence late for the hearing and this evidence has not been considered.

Issue(s) to be Decided

Are the Tenants entitled to the return of the security deposit and pet damage deposit?

Is the Landlord entitled to the monetary compensation sought?

Background and Evidence

This tenancy began on September 1, 2009, with the parties entering into a written tenancy agreement. There were three Tenants listed in the original tenancy agreement.

In August of 2010, one of the original Tenants vacated the rental unit and was released from the tenancy agreement. The remaining two Tenants and the Landlord agreed to add two more Tenants into the agreement, bringing the number of Tenants to four, until the end of the tenancy. The parties used an Addendum to amend and extend the original agreement. While the Addendum states the term of the agreement is six months, the dates set out are for a period of seven months. Nonetheless, both parties agree that this was a six month term tenancy.

When the Landlord determined that the Tenants had allowed a pet into the rental unit and the Addendum included a pet clause and a pet damage deposit was paid. One of the Tenants ("Tenant C") paid the pet damage deposit of \$600.00 and it is agreed between the parties that Tenant C alone would be entitled to any applicable refund from this deposit. At this time the Tenant also agreed that the rental unit was to be fumigated for fleas at the end of the tenancy.

The parties also agree that Tenant C and another Tenant ("Tenant M") are jointly entitled to any applicable refund of the security deposit of \$600.00. I note that both deposits were collected and held during a period when no interest is payable under the regulation to the Act.

The Tenants provided the Landlord with a Notice to End Tenancy in accordance with the Act, to be effective on February 28, 2011.

On February 28, Tenant M contacted an Agent for the Landlord and explained they would be delayed in returning the keys as the carpet cleaner they hired was delayed. An Agent for the Landlord explained to Tenant M that their tenancy agreement and the Agent's practice was that the Landlord provided a carpet cleaner and the Tenants reimbursed the Landlord from the deposits. Some discussion occurred and eventually it was agreed the Tenants would use their own carpet cleaner.

The Tenants returned the keys to the rental unit on March 1, 2011, and a fumigation for fleas was to occur before the outgoing condition inspection report was performed. Tenant C and the Agent for the Landlord agreed to meet to perform the outgoing condition inspection report.

On March 2, 2011, the Landlord's Agent was driving by the rental unit and noticed that the rental unit garbage can was almost on the road. The Agent stopped to retrieve the can and return it to the house. The Agent testified that he noticed at this time that some windows were open in the rental unit and then found that doors had been left unlocked. The Agent went through the rental unit and made some notes regarding its condition.

The Agent returned to his office and typed the notes up into the outgoing condition inspection report. When Tenant C called the Agent, the Agent began discussing some of the items he noticed at the rental unit with her. Tenant C became very upset as she believed the Agent for the Landlord and her would attend at the rental unit to do the outgoing inspection. According to the submissions of the Agent, when he informed Tenant C that they would still do the outgoing condition inspection report she repeatedly said it would "not be the same" and became very angry, and then hung up.

Eventually the parties performed the outgoing condition inspection report on March 8, 2011. This did not go well, with the parties arguing over repairs and cleaning of the rental unit and whether or not interest should accrue on the deposits. There was no agreement between them regarding the outgoing condition inspection report and the Tenants did not sign it.

The Landlord claims against Tenant C for fumigating the rental unit for fleas in the amount of \$196.00. The Landlord also alleges that the pet cat scratched a hole into the interior carpet beside door and requests \$89.60 for repairs. There was also a board at the patio door that had to be refinished and the Landlord claims \$22.40 for this. The Agent for the Landlord testified that the Tenants had tried to cover the hole in the carpet with a small area rug.

Tenant C testified that it was not her cat that caused the damage to the rug. She testified that when she was vacuuming the rug it "zippered" and a thread got caught in the vacuum causing the damage. Tenant C testified they had to peel the strand of rug from the vacuum.

The Landlord claims \$172.48 for damage and repairs regarding the kitchen faucet pot sprayer, installing a Swedish light globe, for replacing light bulbs, re-installing a smoke detector and screens. Tenant C testified she did not install the Swedish light globe as she could not reach the fixture. The Tenants deny they damaged the faucet pot sprayer, but agree to the claims for the smoke detector and the screens.

The Landlord had initially claimed for re-keying of the locks at the rental unit, but withdrew this claim during the hearing.

The Landlord also claims \$134.40 for priming and painting bedroom walls and a door jamb casing, which had been damaged.

The Landlord claims for \$56.00 for cleaning the kitchen cabinets, drawers, fridge, range hood and light fixtures.

The Tenants testified that they had cleaned everything and the claims of the Landlord are “ridiculous”. Tenant C testified that they could not reach to clean around the light globes as these were too high. The Tenants testified that the Landlord claims for cleaning of the cabinets and fridge were very minor things and that they had cleaned everything. One of the Tenants testified he was offended when the Agent criticised his repairs of some of the damages. Tenant M testified he did not sign the new lease and alleged this invalidated the lease.

Lastly the Landlord claims against the Tenants for damage to the drywall in the rental unit, in the amount of \$264.43. The Tenants agreed to this amount.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Tenants breached section 37 of the Act, and the tenancy agreement, as they did not leave the rental unit undamaged and it was not reasonably cleaned when they left. I find that by the actions of Tenant M he accepted the terms of the lease and is bound by the terms in it which comply with the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that Tenant C agreed to pay the flea treatment of \$196.00.

I find the Tenants are responsible for the losses arising from damage to the rug. Whether this damage was caused by the cat or simply by the Tenants not paying attention when they were vacuuming, they damaged the rug. For example, if there was a frayed thread from the carpet sticking up prior to the vacuuming, the Tenants should

have reported this to the Landlord and exercised caution when vacuuming. I allow \$89.60 for these repairs and \$22.40 for painting the board scratched by the cat.

I allow the Landlord's claim of \$172.48 for repairs regarding the kitchen faucet pot sprayer, installing a Swedish light globe, for replacing light bulbs, re-installing a smoke detector and screens. The Tenants removed the Swedish light globe and it was their responsibility to re-install it. The faucet pot sprayer is not recorded as being damaged in the incoming report, although it is described. Therefore, any damage done to it during the tenancy is the responsibility of the Tenants to repair.

I allow the claims of \$134.40 for priming and painting bedroom walls and a door jamb casing, which had been damaged. The walls had to be repaired and repainted to the original colours and the Tenants failed to do this prior to vacating.

I also allow the claims for \$56.00 for cleaning the kitchen cabinets, drawers, fridge, range hood and light fixtures. While these items may seem minor to the Tenants, it was their responsibility to perform this cleaning. Since they did not, the Landlord suffered a loss by having to do it and the Tenants must repay the Landlord for this.

I find that the Landlord has established a total monetary claim of **\$985.31**, comprised of \$308.00 for the rug etc., \$264.43 for repair of the drywall, \$172.00 for the kitchen faucet etc., \$134.40 for painting etc., \$56.00 for cleaning and \$50.00 for the filing fee for the Application.

I order that the Landlord retain \$985.31 from the deposits of **\$1,200.00** in full satisfaction of these claims and I order the Landlord to return the balance of the security and pet deposits of **\$214.69** to the Tenants. The Tenants will apportion and do their own reconciliation of the deposits amongst themselves.

I found that the Application of the Tenants was made unnecessarily and I dismiss it.

Conclusion

The Tenants breached the tenancy agreement and the Act by failing to clean and make repairs to the rental unit. The Landlord may keep \$985.31 from the deposits paid and must return \$214.69 to the Tenants. The Tenants' Application is dismissed.

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: June 29, 2011.

Residential Tenancy Branch