



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of the pet damage deposit or security deposit; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and the tenant both attended the conference call hearing, provided affirmed testimony and provided evidence in advance of the hearing. The tenant was also accompanied by an advocate. All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for return of the pet damage deposit or security deposit?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2011 and ended on September 26, 2011. Rent in the amount of \$395.00 per month was payable in advance on the 1st day of each month 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 \$197.50 and no pet damage deposit was collected. The landlord did not cause a move-in or a move-out condition inspection report to be completed by the parties.

The tenant further testified that the tenant called the landlord on September 26, 27 and 28, 2011 and each time, the landlord gave the tenant different reasons for not returning the security deposit. The first reason was that the tenant had not left the rental unit clean; the second reason was that the landlord believed the tenant was dealing drugs; and the 3rd reason was that the tenant had left a hole in the closet wall, all of which are denied by the tenant.

The tenant further testified that the tenant has not provided the landlord with a forwarding address in writing with the exception of the application for dispute resolution which contains an address for the tenant.

The tenant's advocate stated that the tenant's applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement both relate to the security deposit withheld by the landlord.

The landlord testified that the rental unit was not left in a reasonably clean condition and the landlord hired the services of a cleaner. The tenant threatened the cleaner and the landlord, and the landlord feels that as a result of the cleaning required, the tenant is not entitled to recovery of the security deposit.

The landlord also provided a copy of the tenancy agreement, which contains an addendum. Paragraph 2 of the addendum states as follows:

“2. That at the end of a tenancy the Landlord must return the Tenant's Security Deposit, minus any deductions for:

- unpaid rent or bills
- extra cleaning costs
- damage to the residential premise caused by the Tenant(s) and/or guests”

The landlord stated that since there were extra cleaning costs and damage to the residential premises, the tenant is not entitled to recovery of the security deposit.

The landlord did not deny that no move-in or move-out condition inspections were completed at the outset or at the end of the tenancy.

Analysis

Firstly, with respect to the move-in and move-out condition inspection reports, the *Residential Tenancy Act* states that the onus is on the landlord to ensure that such inspection reports are completed with the tenant. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished, and I so find in this matter.

The *Act* further states that the landlord must return the security deposit in full within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing to the landlord, or apply for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must be ordered to pay the tenant double the amount of the security deposit or pet damage deposit. In this case, the landlord's right to claim against the security deposit for damages is extinguished. However, the tenant did not provide the

landlord with a forwarding address in writing except on the Tenant's Application for Dispute Resolution. Therefore, I find that the tenant is not entitled to double recovery.

The landlord also provided a copy of the tenancy agreement and attached addendum which states that the landlord must return the security deposit, minus deductions. The *Residential Tenancy Act* does not sanction that portion of the agreement. In fact, as stated above, the landlord must return the security deposit within 15 days. The *Act* further states that landlords and tenants may not contract outside the *Act*, and any attempt to avoid or contract outside the *Act* is of no effect. I find that the paragraph in the addendum authorizing the landlord to keep deductions from the security deposit for unpaid rent or bills, extra cleaning costs or damages, is contracting outside the *Act* and is of no effect.

Therefore, I find that the tenant is entitled to recovery of the security deposit in the amount of \$197.50. The tenant will be provided with a monetary order in that amount.

The landlord is at liberty to make an application for dispute resolution, but that will not affect this Decision or the monetary order resulting from this hearing.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$197.50. This order is final and binding on the parties and may be enforced.

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: December 14, 2011.

Residential Tenancy Branch