



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord and the tenant both attended the conference call hearing and the landlord provided evidence in advance of the hearing to the tenant and to the Residential Tenancy Branch. The parties both gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began in about August, 2010 and ended on March 31, 2011. Rent in the amount of \$950.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The landlord testified that 2 other tenants had resided in the rental unit, and when one moved out, the landlord agreed that the other tenant could have another roommate in the rental unit, and the landlord approved this tenant. The landlord collected a security deposit from this tenant in the amount of \$237.00 at the outset of the tenancy. No move-in or move-out condition inspection reports were completed.

The landlord further testified that the landlord's daughter was looking after the rentals while the landlord went to India for a vacation. The tenant called the landlord's daughter saying that the tenant had a visitor who brought in bed bugs. Then the other tenant called the landlord's daughter asking her to do something about it.

A K9 dog that is trained to sniff out bed bugs was taken to the rental unit, and the bugs were located in the two bedrooms of the rental unit. The cost for the K9 unit was \$224.00 and fumigation cost was \$504.00, both from a pest control company. A copy of both receipts has been provided for this hearing. The landlord claims half of those amounts from this tenant, and stated that another application has been made with respect to the other half of the cost.

The landlord claims \$364.00 and requests an order to keep the security deposit, which is still held in trust by the landlord. The landlord testified to receiving the tenant's forwarding address in writing on November 15 or 16, 2011.

The tenant testified that the landlord was provided with the tenant's forwarding address in writing on May 12, 2011. The tenant put the note in the landlord's mail box that day and kept a copy, but didn't pursue it.

The tenant further testified that there were bedbugs in the rental unit. The tenant had told the landlord's daughter that the tenant's brother may have brought in bugs, but the brother did not stay overnight. The brother had told the tenant that his place was being fumigated for bed bugs.

The tenant also testified that there were other people inside the rental unit, including a plumber, but the plumber did not enter the rental unit, only the utility area of the building. The tenant did not see any bugs before the tenant's brother visited, but did see evidence of bugs after the tenant's brother visited.

Analysis

The *Residential Tenancy Act* states that if a landlord fails to cause a move-in and a move-out condition inspection report to take place, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlord testified that neither of the reports was completed, and therefore I must find that the landlord's right to claim against the deposit is extinguished.

The *Act* further states that a landlord must return the security deposit to the tenant within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing, and if the landlord fails to do so, the landlord may not make a claim against the security deposit for damages and must pay the tenant double the amount of the security deposit collected by the landlord. In this case, the parties agree that the tenancy ended on March 31, 2011.

Neither the landlord nor the tenant provided any evidence of the date that the landlord received the tenant's forwarding address in writing. The parties provided very different dates in their testimony; the tenant stated that the address was provided in May, 2011 but it was not pursued, and the landlord stated that the address was provided on November 15 or 16, 2011. However, having found that the landlord's right to claim against the security deposit is extinguished, the landlord ought to have returned the tenant's security deposit by December 1, 2011, if the landlord received the forwarding address from the tenant in writing on November 16, 2011. Instead, the landlord kept the security deposit and applied for dispute resolution claiming against the security deposit, and I find that the landlord's application to keep the security deposit must be dismissed.

With respect to the landlord's claim for a monetary order for damages, the tenant did not deny that the guest had in fact brought in the bed bugs. The tenant stated that the guest's home was being fumigated for bed bugs at the time. The tenant also stated that other people were inside the rental unit, including a plumber, but also stated that the plumber was in a common area of the building, not inside this particular rental unit. The tenant also testified that no bugs were found in the rental unit before the guest visited, but bed bugs were found after the guest had been in the rental unit. Therefore, on a balance of probabilities, I find that the tenant's guest did bring the bugs into the rental unit.

Having found that the landlord's right to claim against the security deposit has been extinguished, and having heard the landlord's testimony that the tenant provided a forwarding address in writing on November 15 or 16, 2011, I must find that the landlord must pay the tenant double the amount of the security deposit. Twice the amount of the security deposit is \$474.00. The amount of the landlord's claim is \$364.00 plus the \$50.00 cost of filing this application, for a total of \$414.00. In the circumstances, I find that the landlord is owed \$364.00 for the costs incurred in eradicating the bugs, as well as the \$50.00 cost of filing the application, and the landlord owes the tenant \$474.00. The *Act* also permits that any amounts owed by one party to another may be set off from one another, and I find that the landlord owes the difference, in the amount of \$60.00 to the tenant.

The tenant has not made an application for dispute resolution, and therefore, I decline to issue a monetary order in favour of the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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: February 20, 2012.

Residential Tenancy Branch