



Dispute Resolution Services

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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.

An agent for the landlord company and the tenant attended the conference call hearing; both gave affirmed testimony and were given the opportunity to cross examine each other on the testimony given.

The landlord and the tenant both provided evidence in advance of the hearing, however, neither party provided that evidence to the Residential Tenancy Branch within the time provided in the *Residential Tenancy Act*. The landlord's agent stated that the evidence package from the tenant has not yet been picked up by the landlord however both parties agreed that the evidence provided by the landlord and by the tenant should be considered in this Decision. All evidence and the testimony of the parties have been reviewed and are 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's agent testified that this fixed-term tenancy began on September 1, 2011 and ended on February 29, 2012. Rent in the amount of \$725.00 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 \$362.50 as well as a pet damage deposit in the amount of \$362.50, all of which is still held in trust by the landlord.

The landlord's agent further testified that a previous property manager completed the move-in condition inspection report, and the landlord's agent took over as property manager of the rental unit sometime during this 6 month tenancy. A move-out condition inspection report was completed by the landlord's agent at the end of the tenancy, however neither report was provided for this hearing.

The landlord further testified that a hearing was held before a dispute resolution Officer on February 20, 2012 which resulted in the tenant's application disputing a notice to end tenancy being withdrawn by the tenant. The effective date of the notice to end tenancy was February 29, 2012.

The landlord also testified that the move-out condition inspection showed deficiencies but was not completed; the balcony and storage room areas of the rental unit were not completed on the report due to the tenant swearing at the landlord. The tenant called the police and an officer assisted by giving the keys back to the landlord, and the tenant signed the move-out condition inspection report filling in the box that stated that the tenant disagreed with the report. The tenant also included a forwarding address on the form. The landlord testified that it was completed on February 28, 2012.

The landlord also testified that the rental unit had new carpet, paint and linoleum in July, 2011 which was just prior to the beginning of the tenancy. The tenant had wiped the walls of the rental unit with a magic eraser which left marks on the walls. Also, the corners of the walls were chipped and contained finger prints. The previous property manager made notes on the move-in condition inspection report that small paint chips existed in the hallway and a small dent in the bedroom wall. The landlord provided invoices in the amount of \$200.00 for painting as well as \$53.76 for the purchase of paint. The landlord stated that the claim for painting and cleaning is \$197.76 less than the invoiced amounts, and the move-out condition inspection report shows that the fridge was left in good condition.

The landlord also testified that the tenant had a dog and had told the landlord that the dog threw up and desecrated on the carpet during the tenancy. Also, the carpet in the living room appears to have been cut with a knife in 2 places as well as in the bedroom. The landlord claims \$100.00 to go toward new carpet, but the landlord does not intend to replace it.

The landlord further testified that the tenant left a hole in a screen on a door, and the door sticks. The landlord put in a new screen and fixed the rollers last week. The

landlord claims \$30.00 for that repair, not \$40.00 as stated in the invoice provided for this hearing.

The landlord claims \$200.00 for labor to paint the rental unit; \$53.76 for painting materials; \$135.00 for cleaning the rental unit at the end of the tenancy; \$84.00 for carpet cleaning and \$30.00 to repair and install the screen door.

The tenant testified that the building was in very poor shape, with various stains in the carpet, so the tenant had the carpets cleaned in October or November of 2011, and were cleaned twice during the tenancy. The tenant provided 2 invoices dated October, 2011 and February 27, 2012 to substantiate that testimony. Also, cuts in the carpet were noted on the move-in condition inspection report.

The tenant also testified that the countertop was old and stains were evident prior to the commencement of the tenancy. Further, the screen door would not move; it was stuck during the tenancy and the landlord had talked about replacing it but never did. Holes in the screen also pre-existed the tenancy.

The tenant further testified that others assisted with cleaning on February 27, 2012, prior to the tenant moving out of the rental unit. The tenant's brother was going to attend the move-out condition inspection with the tenant but the landlord refused to allow a witness. The landlord became upsetting and nit-picky during the inspection and called the tenant a "prick." The tenant then went outside of the rental unit and called police.

The tenant also testified that a few weeks after moving out of the rental unit, the tenant went by and was invited into the rental unit by the new tenant. The tenant noted that all items that required attention when the tenancy began were still not completed.

Analysis

The *Residential Tenancy Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and is required to repair any damages caused by the tenant or the tenant's guests or pets. The *Act* also states that the move-in/move-out condition inspection reports are evidence of the condition of a rental unit at move-in and move-out.

The landlord in this case has claimed damages and cleaning to the rental unit, and the onus is on the landlord to prove the claim. The landlord has not provided a copy of the

move-in or move-out condition inspection reports. The tenant has disputed the landlord's claims for stains on the carpets, cuts in the carpets, stains on the countertop, holes in the screen and a damaged door that the tenant stated was stuck and wouldn't move during the tenancy.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to reduce, or mitigate such damage or loss.

In this case, I accept the testimony of the landlord that the landlord cleaned the carpets after the tenant moved out, however I also accept the testimony and evidence provided by the tenant, including copies of carpet cleaning invoices, that the tenant cleaned the carpets twice during the tenancy including at the end of the tenancy. Therefore, I find that the tenant has satisfied the *Residential Tenancy Act* with respect to a tenant's responsibility to leave a rental unit reasonably clean, including cleaning carpets. A tenant is not responsible for leaving a rental unit in the pristine condition that a landlord may want for future tenancies, and I find that the landlord has failed to establish that the tenant should be responsible for another carpet cleaning cost.

The tenant also testified that cuts in the carpet existed prior to the tenancy and were noted on the move-in condition inspection report. I have no evidence before me to contradict that testimony, and therefore, I find that the landlord has failed to establish that the damage exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and the tenant is not responsible for damage to the carpets.

With respect to the damaged door, I have no reason to disbelieve the tenant that the damage pre-existed the tenancy. I find that the landlord has failed to establish that the door or the screen was in any different condition when the tenant moved out than it was when the tenant moved in.

I have also reviewed the invoice dated March 2, 2012 for cleaning the rental unit at the end of the tenancy and notice that cleaning the fridge is part of the work completed, yet the landlord testified that the fridge did not require cleaning at the end of the tenancy. Further, the landlord did not testify or provide any evidence that windows, patio railings, vents, blinds, toilet, stove, mirrors, cupboards, baseboard heaters or linoleum floors required cleaning after the tenant vacated.

With respect to painting the rental unit, the landlord testified that the unit was freshly painted prior to the tenant moving in but later testified that the move-in condition inspection report shows that chips and at least one dent appeared in the walls before the tenant moved in. In the absence of any evidence to substantiate the claim, the landlord's application cannot succeed. I find that the landlord has failed to establish that the tenant caused any damage beyond normal wear and tear.

In summary, I find that the landlord has failed to satisfy the test for damages, and therefore has failed to establish a claim for damages as against the tenant.

The landlord currently holds a security deposit and a pet damage deposit totalling \$725.00 in trust, and I order the landlord to return both deposits in full to the tenant.

Conclusion

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

I order the landlord to return both deposits which are currently held in trust to the tenant.

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: May 25, 2012.

Residential Tenancy Branch