



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenants agent and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on January 01, 2011. Rent for this unit was \$650.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$325.00 on December 08, 2010. The tenant's agent attending

the hearing lived in the tenants unit from August 01, 2011 after the tenant had to leave the unit this date.

The landlord testifies that the tenant's agent did fill in an application for tenancy but was never added to the tenancy agreement and as this was a fixed term tenancy the tenant named on the tenancy agreement is responsible for the terms of that agreement. The landlord testifies that although they were aware that the tenant had moved out on August 01, 2011 the tenant had indicated to the landlord that she wanted to remain as a tenant.

To this affect the landlord's agent testifies that the building manager tried to arrange and coordinate a time for the final inspection of the unit with the tenant. The tenant did not give the building manager a time when she would be available to attend an inspection. The landlord has provided a copy of the notice of final opportunity to schedule a condition inspection which the landlord's agent testifies was posted to the door of the rental unit on December 29, 2011. This Notice gives a scheduled time to conduct the final inspection as December 31, 2011 at 1.00 p.m.

The landlord's agent testifies that the inspection was then conducted in the tenant's absence and the landlord has provided a copy of the inspection reports. The move out report highlights many unclean areas of the unit and three broken blinds. The landlord seeks to recover \$100.00 for cleaning the unit, \$300.00 for replacement blinds, and \$300.00 for pet damage. The landlord's agent orally details the pet damage as cat litter spilled out of the box, urine stains on the hardwood flooring resulting in damage to the floor and damage inside a closet where the cat was kept. The landlord's agent testifies that no pets were allowed in the unit. The landlord's agent also testifies that the tenant failed to return the keys and the landlord seeks \$15.00 for replacement keys.

The landlord's agent testifies that the tenant failed to pay the final utility bill for the tenants electricity account to the City of \$37.78. The landlord has provided a letter from the City which indicates that the account was closed on December 31, 2011 and

payment was due on February 07, 2012. The account remains unpaid and may be subject to transfer to the property taxes of the owner. The landlord's agent testifies that this account has been applied to the landlord's property taxes.

The landlord's agent testifies that the tenant sent her forwarding address in a letter dated April 13, 2012. This letter was not posted to the landlord until April 23, 2012 and was received by the landlord on April 24, 2012. The landlord's agent testifies that they applied to keep the security deposit on April 27, 2012.

The landlord seeks an Order to keep the tenants security deposit of \$325.00 to offset against the landlords claim. The landlord also seeks a monetary order for the balance and seeks to recover the filing fee of \$50.00 from the tenant.

The tenant's agent testifies that he was a co-tenant of the tenant and moved into the rental unit on August 01, 2011 when the tenant moved out of the unit. The tenant's agent testifies that the tenant asked him to move into the unit so the tenant would not break her lease and the landlords building manager was fully aware of this situation. The tenants agent accepts that he only filled ion an application for tenancy and is not named on the tenancy agreement provided in evidence by the landlord.

The tenant's agent agrees that he did allow a cat to live in the unit for the last month of the tenancy as he was looking after it for a friend. However the tenant's agent disputes that this cat caused any damage to the unit including a closet as claimed by the landlord.

The tenant's agent disputes the landlords claim for cleaning the unit. The tenant's agent testifies that the building manager was aware that he was moving out and the tenancy was ending on December 31, 2011. The tenant's agent testifies that the building manager telephoned him and insisted that he move out on December 27, 2011 as she was going to be away on December 31. The tenant's agent testifies that he could not move out as requested on December 27 but did move the majority of his belongings out

of the unit on December 26, 2011. The tenant's agent testifies that he planned to return to remove the remainder of his belongings and clean the unit for the remainder of the tenancy. However, when he returned to the unit on December 28th he found the landlords building manager and a cleaning lady in the unit. They had put the tenant's agent's belongings in plastic bags and had removed the contents of the fridge and disposed of these contents in a dumpster.

The tenant's agent testifies that the building manager became hostile and would not allow the tenant's agent to gain access to the unit to remove his belongings and to clean the unit. The tenant's agent testifies that before this date the building manager had made no contact with him about scheduling a move out inspection as the building manager was aware that he was living there alone. The tenant testifies that this was upsetting to him so he collected his belongings that had been placed in bags and left the unit. The tenant's agent testifies that he did not return the keys as he was told not to return to the unit.

The tenant's agent testifies that the blinds were not hung when the tenant moved into the unit and they remained in a closet in the unit for the duration of the tenancy. The tenant's agent disputes that the tenant or any other person at the rental unit damaged the blinds.

The tenant's agent agrees that the final utility bill is unpaid. The tenant's agent testifies that he closed the account with the City and gave them his forwarding address but never received a copy of the bill. However the tenant's agent agrees he is responsible for this bill.

The landlord's agent disputes the tenant's agent claim that the blinds were never hung in the unit and states the move in condition inspection report shows the blinds as being in a good condition. The landlord's agent testifies that he went to the unit on December 28, 2011 and the unit was in a complete mess. The tenant's agent had moved the majority of his belongings out of the unit and the landlord's agent assumed the tenancy

had ended on that day and the unit had been abandoned so he instructed the building manager to go in and clean the unit.

The tenant's agent testifies that it was made clear to the building manager that the tenant's agent required the full term of the tenancy to move out and clean the unit.

Analysis

With regard to the issues surrounding the tenancy; I find there is only one tenant named on the tenancy agreement and as such that tenant remains responsible for the tenancy for the duration of the tenancy. I do accept however that the landlords agent and building manager were aware that the tenants boyfriend (tenants agent) resided in the unit while the tenant was living elsewhere however this does not automatically assume a tenancy as there is no indication as to which party paid rent. Consequently, I find the landlord has named the correct tenant on the application and I accept that the tenant's agent is acting on behalf of the tenant for the purposes of this hearing.

With regard to the landlords claim for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find that the landlord has not met all the components for the test with regard to the alleged damage to the blinds and pet damage. The landlord has not shown what damage was sustained to the blinds and what the actual cost was to rectify this damage. I further find the landlord has not shown what damage was caused by the cat and the actual cost to rectify this alleged damage. Consequently these portions of the landlord's monetary claim are dismissed.

With regard to the landlords claim for cleaning; I have reviewed the documentation and the testimony of the parties attending and find that this was a fixed term tenancy that was due to end on December 31, 2011. When a tenancy is due to end on December 31, 2011 a landlord may not enter the unit until that date and it is unreasonable to assume that the tenant has abandoned the unit without indication from the tenant that this is the case. It is therefore my decision that the landlords building manager prevented the tenant's agent from returning to the unit before the end date of the tenancy to remove the remainder of the belongings and to clean the unit. Consequently, this portion of the landlord's application for cleaning is dismissed.

With regard to the landlords claim for the City utility bill the tenants agent does not dispute this bill and as such I find in favor of the landlords claim to recover the sum of **\$37.78.**

With regard to the landlord claim to recover \$15.00 for replacement keys; the tenant's agent agrees the keys were not returned at the end of the tenancy but argues that he was upset by the building manager's actions in preventing the tenant's agent's access

to the unit. However the tenant remains responsibly for these keys and should have returned them to the landlord after the tenancy had ended on December 31, 2011. Consequently, I find the amount claimed of \$15.00 to be a reasonable amount and I therefore find in favor of the landlords claim for **\$15.00** to replace the keys.

With regard to the landlords claim that the tenant was given at least two opportunities for inspection and failed to attend the inspection; the landlord's agent has testified that the building manger attempted to reach the tenant by phone concerning a date for the inspection and the tenant did not provide her availability to schedule an inspection. The landlord's agent testifies that the Notice for final opportunity to schedule an inspection was posted to the tenant's door on December 29, 2011. However the landlord's agent also testified that they had assumed the tenancy had ended on December 28th after the tenant's agent had removed the majority of his belongings. The tenant's agent argues that he was prevented from returning to the unit by the landlords agent on December 28th so would not have been aware that this notice had been posted to the door of the unit.

It is my decision that the landlord has not acted reasonably in posting this notice after December 28, 2012 and the landlord has provided no other evidence to show that the tenant was given other opportunities to schedule an inspection. Consequently, I find the landlords application that the tenant has extinguished their right to recover the security deposit under s. 36(1) of the *Act* to be unproven.

As the landlord has been partially successful with their claim I find the landlord may recover half the \$50.00 filing fee from the tenant to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*.

I therefore find the landlord is entitled to retain the following amounts from the security deposit:

Security deposit	\$325.00
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Less utility bill	(-\$37.78)
Less cost for new keys	(-\$15.00)
Less half of the filing fee	(-\$25.00)
Amount to be returned to the tenant	\$247.22

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to retain the sum of **\$77.78** from the tenant's security deposit. The balance of the security deposit of **\$247.22** must be returned to the tenant within five days of receiving this decision.

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 26, 2012.

Residential Tenancy Branch