



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 unpaid rent or utilities, 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 an agent for the tenant attended the conference call hearing, each gave affirmed testimony, and the parties provided evidence in advance of the hearing. The landlord provided evidence of, and testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 18, 2012, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

The parties 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 unpaid rent or utilities?

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 fixed term tenancy began on October 1, 2011 and expired on March 31, 2012 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,030.00 per month, including natural gas, is payable in advance on the 1st day of each month, and the landlord testified that the parties signed a written tenancy agreement, however a copy of that agreement was not provided for this hearing. On September 9, 2011 the landlord collected a security deposit from the tenant in the amount of \$500.00.

The landlord and the tenant conducted a move-in condition inspection report at the commencement of the tenancy, and the landlord completed a move-out condition inspection report without the tenant present after the tenancy had ended. The landlord stated that discussions took place about the move-out condition inspection, but the tenant did not attend and the landlord did not provide the tenant with a Final Opportunity to Conduct a Condition Inspection. A copy of the move-in/out condition inspection report was provided for this hearing, and both move-in and move-out inspections are contained in the same report.

The landlord further testified that on April 6, 2012 the tenant gave written notice to vacate the rental unit effective April 30, 2012, and had paid rent in full for that month. The parties exchanged emails after that date with respect to ending the tenancy and copies were provided for this hearing.

The landlord placed an advertisement on Craigslist, a free on-line advertising site, and stated that in the landlord's experience, that form of advertising is most effective. The rental unit was re-rented for June 1, 2012.

The landlord also purchased a microwave oven from the tenant at a cost of \$70.00, and applied that debt owing to the tenant to the security deposit held in trust. Those notes are made on the move-out condition inspection report. The landlord returned \$200.00 of the security deposit to the tenant along with the \$70.00 for the appliance purchase, and the landlord still holds the amount of \$300.00 in trust of the security deposit originally collected.

The landlord further testified that the tenant provided a forwarding address in writing on May 7, 2012. The move-out portion of the move-in/out condition inspection report contains no signature of the tenant or the landlord, but states that it is signed May 7, 2012 and contains a forwarding address for the tenant. No further evidence of the date the tenant provided a forwarding address in writing has been provided, and the Landlord's Application for Dispute Resolution was filed with the Residential Tenancy Branch on May 18, 2012.

The landlord's application claims one month of rent in the amount of \$1,000.00 and an order permitting the landlord to keep the \$300.00 of the security deposit in partial satisfaction of the claim, although the landlord has provided a number of receipts and a copy of a letter sent to the tenant regarding repair work. The letter states that the landlord deducted \$50.00 from the security deposit as a "good faith estimate at the time."

The tenant's agent testified that the keys to the rental unit were dropped off to the landlord's residence on April 30, 2012 and the tenant provided a forwarding address in writing at that time, however the tenant has not provided any evidence of that fact.

The tenant's agent also testified that the landlord had agreed in an email to collect one week of rent from the tenant. A copy of that email was provided for this hearing which states that the landlord had agreed to purchase the microwave oven and the landlord would include the \$70.00 cost as a credit when sorting out the security deposit, and the landlord would also like to deduct an amount for 1 weeks rent given the notice one week into April. It further states that, "There are landlords that will demand an entire month's rent if notice isn't by the end of the previous month, since those serious about looking are usually doing it in that first week. However, you've been good tenants, so I'm just going to let it go." The email is dated April 26, 2012 and also requests a forwarding address.

The move-out condition inspection report has a section in the pre-printed form entitled "SECURITY/PET DAMAGE DEPOSIT STATEMENT." The statement shows that the amount of the security deposit is \$500, and the microwave purchase of \$70 brings a total to \$570. Then the statement shows "Unpaid Rent/Late Fees (1 wk rent) \$250" and "Painting/drywall/plate replace \$50."

Analysis

I have read the emails exchanged between the parties and I've reviewed the move-in/out condition inspection report. The Landlord's Application for Dispute Resolution does not make a claim for damages as against the tenant, although the details section of the application mentions an estimate of \$50.00 for repairs. Whether or not the landlord intended to make such a claim, I find that the landlord has failed to establish damages. The move-out condition inspection report was completed in the absence of the tenant and I find that the landlord has failed to establish that any attention required to the rental unit at the end of the tenancy was beyond normal wear and tear.

The *Residential Tenancy Act* also states that a landlord's right to claim against the security deposit for damages is extinguished if the landlord fails to give the tenant at least 2 opportunities to complete the move-out condition inspection report in the approved form. In this case, the landlord has not made a claim for damages but for unpaid rent, and in that instance, the landlord's right to claim against the security deposit is not extinguished.

The *Act* also requires a landlord to return a security deposit in full or apply for dispute resolution to claim against the security deposit within 15 days of the later of the date the

tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the tenant is entitled to double the amount of such security deposit or pet damage deposit or both. In this case, the tenant's agent testified that it was provided on April 30, 2012 and the landlord testified that it was on May 7, 2012. I find that the landlord's testimony is questionable considering the fact that the move-out condition inspection report is May 7, 2012 but the landlord did not testify to how it was received from the tenant that day when neither the landlord nor the tenant signed the report, and it's clear the report was completed in the absence of the tenant. The emails exchanged between the parties do not provide any evidence, and absent such evidence I cannot find that the landlord failed to act within the time required considering that the landlord's application was filed on May 18, 2012.

With respect to the landlord's claim for one month's rent, I accept the testimony of the tenant's agent. The emails exchanged between the parties suggest that the parties had agreed to one week's rent. Further, the move-out condition inspection report completed by the landlord indicates one week's rent was charged against the security deposit. The parties are at liberty to make agreements, and I find that the parties did so and are bound by it.

I further find that the landlord has failed to establish mitigation. The landlord testified that an advertisement was posted on Craigslist, and that has proven to be the most effective, but did not provide any evidence or testimony with respect to when the advertisement was posted and for how long. The *Act* requires parties to do whatever is reasonable to mitigate or reduce the loss suffered.

The landlord testified that rent was \$1,030.00 including utilities, but has made a claim for \$1,000.00 for one month of unpaid rent. In the circumstances, I find that the rental amount is \$1,000.00 per month plus \$30.00 per month for utilities, and the landlord is entitled to a monetary order for one week's rent in the amount of \$233.33. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. The landlord currently holds \$300.00 of the security deposit, and I find that the landlord has established a claim for \$283.33 and must return the balance of \$16.67 to the tenant.

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 \$16.67.

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: July 27, 2012.

Residential Tenancy Branch