



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
 Tenant: MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied 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 the application. The tenant has applied 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 all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of the application. The tenant's application also requests that double the amount of the security deposit be ordered pursuant to the *Residential Tenancy Act*.

The landlord and the tenant attended the conference call hearing, and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony, all of which has been reviewed and is considered in this Decision. No issues with respect to service were raised.

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?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to a monetary order for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

This fixed term tenancy began on July 1, 2011 and expired on June 30, 2012 at which time the tenancy ended. Rent in the amount of \$1,175.00 per month plus \$35.00 for parking was payable in advance on the 1st day of each month and there are no rental arrears. On June 4, 2011 the landlord collected a security deposit from the tenant in the amount of \$587.50 which is still held in trust by the landlord.

The landlord testified that a move-in condition inspection report had been completed by the parties at the outset of the tenancy, however a copy was not provided for this hearing. The landlord testified that it shows that the carpet and floors were clean, all walls are marked as OK, blinds and windows were clean, cabinets were clean, as were the bathroom and deck. The report is signed by the tenant and the resident manager and dated July 5, 2011.

The landlord further testified that she told the tenant that before moving out that the parties had to complete a move-out condition inspection, but the landlord does not recall offering a date or time. The tenant left a forwarding address in writing on an envelope with the keys on the kitchen counter. The landlord is not sure when the tenant actually vacated the rental unit but the landlord found the note and keys on June 30, 2012. The landlord completed the move-out condition inspection, took photographs of the rental unit and then phoned the tenant. The tenant was at an airport back East. The landlord told the tenant that the landlord should be entitled to \$600.00 for damages, or at least the security deposit.

The rental unit was not left clean by the tenant when the tenant departed, and the landlord claims \$148.00 for carpet cleaning, \$75.00 for broken or bent blinds, \$377.00 for cleaning the rental unit and \$50.00 for recovery of the filing fee, for a total of \$650.00. Photographs of the rental unit were provided for this hearing, and the landlord testified that the photographs show the condition of the rental unit at the end of the tenancy as left by the tenant, including a photograph of bent metal blinds. The landlord testified that there is no receipt for blinds because some are kept on stock by the landlord.

A copy of the move-out condition inspection report was provided for this hearing and it contains dollar amounts for tenant charges that are filled in with handwriting and potential tenant charges which are part of the pre-printed form. None of the items of the rental unit are marked as OK on the report, and comments are included showing what cleaning was required. The handwritten tenant charges amount to \$665.50. The form is signed by the Resident Manager only.

With respect to the tenant's claims, the landlord stated that the rental unit was shown 4 times before the tenant moved out. The tenant had agreed to that in writing but asked for 20 minutes notice which was provided every time. At first the tenant had not agreed, but the landlord told the tenant notice would be given every day. The tenant then told the landlord that he had thought about it and then signed the agreement.

The landlord's witness testified to being a cleaner who is employed by the landlord. The witness testified to seeing the photographs and that they accurately depict the condition of the rental unit at the end of the tenancy. The witness was at the rental unit cleaning for 8 hours per day for 2 days. The witness cleaned the toilet, oven, sides of the stove and inside of the fridge. The floor was cleaned 5 times because the witness' shoes kept sticking to the floor.

The tenant testified that upon telling the landlord that the tenant was moving out the landlord told the tenant that the tenant would have to sign a consent allowing the landlord to show the rental unit to perspective renters. The tenant replied to the landlord that it was not legal, and the landlord then said she would give the tenant a notice every day. The tenant was afraid the landlord would enter the rental unit at 11:00 p.m. The tenant didn't know what to do so the tenant signed the consent and waited every day for a month for someone to show up. The rental unit was shown 4 times. The tenant claims the last month of rent for the inconvenience. A copy of a notice to enter dated May 29, 2012 for this rental unit has been provided for the hearing. It states, "We will be entering your apartment in the next 24 hours on__until rented__ between 8:00 AM & 8:00 PM to show to prospective tenants," is signed by a manager and the tenant.

From the tenant's perspective the rental unit was left clean, and the tenant provided 3 photographs and testified that they were taken inside the rental unit at the end of the tenancy. The photographs were taken at quite a distance in comparison to the landlord's photographs

The landlord told the tenant to leave the keys in the mail slot in the office, which the tenant did. The landlord then called the tenant acknowledging receipt of the keys and asked the tenant to send the landlord an email consenting to the landlord keeping the security deposit but the tenant disagreed.

Analysis

The *Residential Tenancy Act* requires a landlord to provide a tenant with at least 2 opportunities to complete a move-out condition inspection report in accordance with the regulations. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished.

The *Act* also states that a landlord has 2 choices with respect to security deposits; to return the deposit in full or apply for dispute resolution to keep it within 15 days of the later of the date the tenancy ends or the date the landlord receives a forwarding address of the tenant in writing. If the landlord fails to do either, the landlord must pay the tenant double the amount of the security deposit. If a landlord's right to claim against it is extinguished, the landlord has one option remaining, and that is to return the deposit to the tenant. In this case, I find that the landlord's right to claim against the deposit for damages is extinguished. The landlord testified to receiving the tenant's forwarding address in writing on an envelope with the keys to the rental unit on June 30, 2012 which is also the date the tenancy ended. The landlord did not return the security deposit to the tenant within 15 days of June 30, 2012 and therefore, the landlord must repay the tenant double the amount, or \$1,175.00.

Although the landlord's right to claim against the security deposit for damages is extinguished, the landlord's right to claim for damages is not extinguished. In order to be successful in a claim for damages, the onus is on the landlord 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 tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

Also, any amount awarded to the landlord must not place the landlord in a better financial position than the landlord would be in if the damage or loss had not occurred.

I have reviewed the photographs and evidentiary material provided by the landlord, and I accept the testimony of the landlord's witness that the photographs depict a true illustration of the rental unit as left by the tenant at the end of the tenancy. The *Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. I find that the photographs and the testimony of the landlord and the landlord's witness show that the tenant did not leave the rental unit reasonably clean, and the landlord has established a claim for cleaning.

The landlord did not hire a cleaner who charged a specific amount and provided an invoice for the service, but an employee of the landlord cleaned and testified that it took 8 hours per day for 2 days to finish. At \$377.00 as claimed by the landlord, the cleaning cost is \$23.56 per hour which I find reasonable. I also find the landlord's claim in the amount of \$148.00 for carpet cleaning to be reasonable for a one year tenancy.

With respect to broken or bent blinds, I find that the landlord has failed to establish the out-of-pocket expense that the landlord incurred. There is no evidence before me to ascertain whether the replacement of the blinds would cost the landlord \$20.00 or \$75.00, or the quality of the blinds that were in the rental unit at the commencement of the tenancy. I therefore find that the landlord has failed to satisfy element 3 in the test for damages.

With respect to the tenant's application for a monetary order for one month's rent for waiting for someone to show up to view the rental unit for a month, the tenant admitted that the landlord always called first before showings. The *Act* states that

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenant testified that he was afraid that the landlord would give a notice every day which might be as late as 11:00 at night. I have reviewed the notice provided by the landlord, and I find that it is not in accordance with the *Act* because it does not contain a

date for the entry; it simply says “until rented.” The tenant, by law, could have refused entry to the landlord based on the notice.

There is no evidence that the landlord had any intention of showing the rental unit at night and no evidence that the notice was acted on by the landlord. The tenant allowed the landlord to show the rental unit on 4 occasions during the last month of the tenancy and the landlord always called the tenant first. Even though the landlord may have provided the tenant with incorrect information, I find that the tenant has failed to establish that any loss was suffered, or that the landlord has failed to comply with the *Act* or the tenancy agreement, and the tenant’s application is hereby dismissed.

In summary, I find that the tenant has established a claim in the amount of \$1,175.00 for return of double the amount of the security deposit and the landlord has established a claim for cleaning in the amount of \$377.00 and carpet cleaning in the amount of \$148.00.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

I also find it prudent in the circumstances that the awards be set off from one another, and I hereby order the landlord to pay to the tenant the difference in the amount of \$650.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favor of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$650.00.

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: September 21, 2012.

Residential Tenancy Branch