



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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.

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

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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 February 1, 2012 although the tenant was permitted to occupy the rental unit earlier, being January 13, 2012. The fixed term was set to expire on January 31, 2013. Rent in the amount of \$765.00 per month was payable in advance on the 1st day of each month. On January 9, 2012 the landlord collected a security deposit from the tenant in the amount of \$382.50 which is still held in trust by the landlord. The tenant moved out of the rental

unit sometime in August, 2012, having paid rent for the month of August. A move-in condition inspection report was completed on January 13, 2012 and a move-out condition inspection report was completed on August 11, 2012, and copies were provided for this hearing. The landlord has also provided photographs of the rental unit immediately prior to the move-in condition inspection and photographs of the rental unit after the tenant moved out.

The landlord's agent further testified that the tenant was present for the move-out condition inspection report and the landlord's agent told the tenant that cleaning was required. The balcony deck was very dirty, windows were not cleaned at all, the stove, fridge and hood were not cleaned, countertops, kitchen cabinets and the bathroom tile were not cleaned, doors and walls were left with fingerprints, the curtains and drapes were very crumpled and located in a closet. The landlord's agent stated that the drapes had to be ironed before they could be hung. The tenant replied to the landlord that the rental unit was in that condition upon moving in, so the tenant refused to clean.

The landlord's agent further testified to cleaning the rental unit for about 7 hours and it took about 2 hours to iron and hang the drapes. The drapes in the living room were very large, extending wall to wall, and there were drapes for the bedroom as well that required ironing. The landlord claims \$120.00 for suite cleaning and \$30.00 for ironing the drapes.

The landlord's agent also testified that paragraphs 23 and 44 of the tenancy agreement provides that the tenant will clean the carpets, and the tenant was told at the commencement of the tenancy that the cost for the landlord to do the carpet cleaning at the end of the tenancy would be \$88.48. The landlord company uses the services of a carpet cleaner and provided a receipt for that amount.

The landlord also claims liquidated damages in the amount of \$600.00 as provided for in the tenancy agreement. A copy of the agreement was provided by the landlord for this hearing, and it appears to be initialled by the tenant at paragraph 5 which states: "If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may treat this Agreement as being an end. In such event, the sum of \$600.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property."

The landlord's agent stated that the rental unit was advertised on Craigslist, an on-line advertising website on July 27, 2012 after receiving the tenant's notice to end the tenancy. The rental unit was re-rented on September 16, 2012 for a tenancy to begin

on October 1, 2012 and the advertisement ran until then. The landlord did not provide a copy of any advertisements, but provided a listing of the number of times and dates that the rental unit was shown to perspective renters and inquiries commencing August 1, 2012 and ending on August 23, 2012. The landlord's agent testified that the rental unit was shown, or there were other inquiries beyond August 23, 2012, however the landlord has only provided the list up to the date that the landlord's application for dispute resolution was filed, which was on August 23, 2012.

The landlord claims \$600.00 in liquidated damages, \$120.00 for suite cleaning, \$30.00 for ironing drapes, \$88.48 for carpet cleaning, for a total of \$838.48, and \$50.00 for the cost of filing the landlord's application, for a total claim of \$888.48.

The tenant testified that the landlord's claim for 7 hours of cleaning the rental unit is ridiculous for a 1 bedroom unit. The tenant and the tenant's mother cleaned the rental unit, and the stove was used very little.

The tenant phoned the landlord in July advising that the tenant was planning to move out at the end of July and had already secured a new place for the month of August, 2012. The landlord responded that if the tenant paid rent for August, the tenant would not have to pay liquidated damages because it would not be hard to re-rent and would be rented for September 1, 2012 or sooner. The tenant paid rent in full for August and moved out at the end of July, 2012. During cross examination, the tenant agreed that the landlord told the tenant that if the rental unit was re-rented for August, the tenant would receive a reimbursement for August's rent, and if rented by September 1, 2012 the tenant would not be required to pay liquidated damages, however the tenant also testified that the landlord had told the tenant that another tenant had been found.

The tenant disagrees that the landlord ever mentioned the fee for carpet cleaning at the commencement of the tenancy or any other time. The landlord told the tenant that more cleaning was required and the tenant found that too much, in addition to paying rent for the month of August, and the landlord refused to return the security deposit. The tenant stated that the landlord is only going after the tenant for liquidated damages and cleaning because the tenant refused to clean more which made the landlord's agent mad and told the tenant, "I don't do this for free."

Analysis

The tenancy agreement is clear that the parties entered into a contract for a tenancy to begin on February 1, 2012 and to expire on January 31, 2013. The document also

clearly states that if the tenant ends the tenancy earlier, the tenant is required to pay to the landlord \$600.00 in liquidated damages, which is not a penalty but covers the landlord's costs of re-renting the rental unit. The tenancy agreement is initialled by the tenant next to that paragraph.

There are 2 issues with respect to liquidated damage claims: firstly that the landlord must prove that the landlord did whatever was reasonable to mitigate the loss of rental revenue; and secondly that the liquidated damages do not serve as a penalty, but must be a genuine pre-estimate of the costs associated with re-renting the rental unit.

The *Act* also requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I have viewed the photographs of before and after the tenancy, as well as the move-in and move-out condition inspection reports, and I agree with the landlord that the rental unit was not left reasonably clean. The regulations to the *Residential Tenancy Act* also state that a landlord must ensure that the condition inspections are completed and state that the reports are evidence of the condition of the rental unit at the commencement and end of the tenancy. Therefore, I find that the landlord has established a claim for cleaning in the amount of \$120.00.

With respect to carpet cleaning, I have reviewed the tenancy agreement, which clearly states that the landlord will clean the carpets and will be paid for by vacating residents. The landlord testified that the tenant was told what that cleaning bill would be, and the tenant disputed that testimony, but the tenant initialled that paragraph of the tenancy agreement as well. Paragraph 23 of the tenancy agreement has also been initialled by the tenant, and that paragraph states that the tenant will pay for professional carpet cleaning at the end of the tenancy if they are professionally cleaned at the start of the tenancy and for cleaning window coverings. The landlord did not testify that they were professionally cleaned at the start of the tenancy, but the tenant did initial paragraphs 44 and 23, which essentially is an agreement to clean carpets and window coverings at the end of the tenancy, which I find the tenant did not.

In the circumstances, I find that the landlord has established a claim as against the tenant for the relief sought. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

The landlord currently holds a security deposit in the amount of \$382.50 in trust, which I find should be set off from the amount of the landlord's claim. I order the landlord to keep the security deposit of \$382.50 and I grant the landlord a monetary claim for the balance of \$505.98, which includes recovery of the filing fee.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$382.50 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$505.98.

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: November 13, 2012.

Residential Tenancy Branch