



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPB, OPC, MNDC, MNSD, SS, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order. The landlord also seeks an order for substitute service and an order of possession.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The tenant had submitted his Application for Dispute Resolution seeking return of a security deposit on September 14, 2012. From the evidence submitted by the landlord, in particular an email sent to one of his agents, he was aware of the tenant's Application on or before September 28, 2012.

The landlord filed his Application for Dispute Resolution on November 27, 2012 and was advised to serve the tenant personally in order to be in compliance with the Residential Tenancy Rules of Procedure. The landlord has submitted an email sent to the tenant on November 27, 2012 advising him he was filing a cross Application and had attached some documents to the email.

The landlord, on November 29, 2012, submitted an "amended" Application for Dispute Resolution removing his request for an order of possession and for an order allowing substitute service. The landlord testified that he did not submit his Application until November 27, 2012 because he had just returned from being away due to a conflict with his building manager he felt it best to complete the Application in this case himself.

The tenant testified he was prepared to address the landlord's Application in this hearing. As such, I allowed the landlord's Application to be heard as a cross Application with the tenant's Application. I also accept the landlord's amends to his Application as noted above.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit; for compensation for damage or loss and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on September 1, 2006 for a month to month tenancy beginning on September 1, 2006 for a monthly rent of \$575.00 due on the 1st of each month with a security deposit of \$287.50 paid. The tenancy ended when the tenant vacated the rental unit on or before July 31, 2012.

The tenant also submitted into evidence a copy of letter to his landlord's agent dated September 1, 2012 providing the landlord with his forwarding address and a copy of a cheque provided by the landlord dated September 4, 2012 in the amount of \$153.10 with a notation "d d refund".

The tenant testified that despite giving his forwarding address to the landlord's agent in July, 2012 he had not provided it in writing to the agent until September 1, 2012.

The landlord has submitted into evidence the following documents:

- An email dated November 29, 2012 from the landlord's agent to the landlord noting that the tenant had been told "about three years or so ago" that he could have a cat if he paid a pet deposit and that a few months later despite not paying a pet deposit the agent saw that he had a cat in the rental unit;
- An email dated October 4, 2012 from another agent for the landlord to the landlord stating that he had completed a "look" at the rental unit on the tenants exit. The email states he found the place vacuumed and cleaned. The email goes on to say that "Roger found cat hair and that the carpet had been somewhat worn but he did not think much about that because an offer had been made to replace it as it was over its life expectancy. The writer also notes that no Condition Inspection Report was completed;
- Copies of receipts and an email in relation to carpet removal (\$224.00) and new carpet installation (\$3,617.58).

The landlord testified that the amount of the refund provided to the tenant was based on an inadequate condition inspection by his agent that had only deducted an amount for carpet cleaning. Upon further consideration the landlord felt the carpet required replacement, in part, because the tenant had obtained a cat during the tenancy without the landlord's consent or payment of a pet damage deposit.

The landlord confirmed that no move in condition inspection report had been completed. The landlord also testified that he could not provide a definitive age of the carpet other than it was in the unit prior to his purchase of the property in 2005. While the landlord was also unsure of the age of the building the tenant thought it to be built in 1974 and the landlord thought that would be a reasonable assumption. The landlord could not confirm if the carpet was original to the rental.

Both parties agree the landlord had had discussions in early 2012 regarding replacing the carpets at that time and prior to the end of the tenancy.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit, in full or less any mutually agreed upon (in writing) amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the evidence before me I accept the tenancy ended on July 31, 2012 and that the landlord's agent received the tenant's forwarding address on September 1, 2012. As such, to comply with Section 38(1) the landlord was required to return the full security deposit or file an Application for Dispute Resolution no later than September 15, 2012.

As the landlord only returned a portion of the deposit before September 15, 2012 and failed to file an Application for Dispute Resolution until November 27, 2012 seeking to claim against the balance of the deposit I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the deposit in accordance with Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In order to establish if the tenant caused any damage to the rental unit the burden of proof is on the landlord to establish the condition of, in this case, the carpet at the start of the tenancy and at the end of the tenancy.

As the landlord has provided evidence other than his building manager's statement from the end of the tenancy that unit was "vacuumed and clean" I find the landlord has failed to establish any damage to the carpet was caused by the tenant.

Further, as the landlord attributes the damage to the carpet to be, in part, because of the tenant's breach of the tenancy agreement in having a cat without his permission and yet the landlord had been aware of the cat for at least 3 years without following through on either having the tenant remove the cat or ending the tenancy for breaching a term of the tenancy agreement, I find the landlord failed to mitigate any loss resulting from potential pet damage to the carpet.

Conclusion

For these reasons, I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$471.90** comprised of \$575.00 double the security deposit and the \$50.00 fee paid by the landlord for this application less \$153.10 already returned to the tenant..

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

For the reasons noted above, I dismiss the landlord's Application in its entirety.

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: December 05, 2012.

Residential Tenancy Branch