



Dispute Resolution Services

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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 respecting applications made by the landlord and by the tenant. The landlord has applied 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 retain all or a portion of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants have 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 double the amount of the pet damage deposit and security deposit; and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord company and one of the tenants attended. The parties both provided evidentiary material prior to the hearing, and the landlord called one witness. The parties and the witness gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on the testimony and evidence provided, 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

- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to an order permitting the landlord to retain all or a portion of the pet damage deposit or security deposit in full or partial satisfaction the claim?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants 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

The parties agree that this month-to-month tenancy began on December 1, 2010 and ended on August 31, 2012. Rent in the amount of \$895.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The tenants had resided in another unit of the same landlord and on January 1, 2007 the landlord collected a security deposit from the tenants in the amount of \$412.50 as well as a pet damage deposit in the amount of \$320.00, which was collected by installments during that tenancy. Both deposits were transferred to this rental unit at the commencement of this tenancy. None of the deposits has been returned to the tenants. The parties also agree that the landlord received the tenants' forwarding address in writing on September 14, 2012, and no move-in or move-out condition inspection reports were completed.

The landlord's agent testified that one of the tenants was the resident manager of the rental units within the complex and completed the tenancy agreement. The tenant was also aware, as the manager of the complex that move-in and move-out condition inspection reports were required and failed to complete them.

The landlord's agent further testified that the tenants left the rental unit in a state that required the rental unit had to be painted; the tenant had completed nail-hole touch-ups on walls but the paint did not match the wall and left numerous visible spots. The landlord provided photographs of the wall to illustrate the spotted walls. Also provided is a receipt dated October 6, 2012 in the amount of \$600.00, although the landlord only claims \$500.00. The landlord provided another receipt dated September, 2010 to show that the rental unit had been painted just prior to the commencement of this tenancy.

Further, the landlord testified that the bi-fold doors were off the tracks, not installed. The tenant left the rental unit reasonably clean but did not pull out the stove; the dishwasher was not clean and the tenants left debris in the yard. The landlord's photographs include some showing 2 motorcycles that appear to be abandoned near 2 fences. The landlord's agent testified that they were left on the property of the landlord and were abandoned there by the tenants. Also included in the landlord's evidentiary material is an invoice dated October 22, 2012 which breaks down the charges to the landlord for 3 hours of cleaning after painting, mopping floors and dusting; 4 hours for removal of the motorcycles, outside table and other debris; 4 hours for repairs to a towel bar, a cable outlet, door stop, smoke detectors and 4 bi-folds. Each hour is charged at \$15.00 per hour and \$19.80 for HST, for a total of \$184.80. Another invoice dated

September 23, 2012 in the amount of \$190.40 has been provided for carpet cleaning, strain treatment and pet treatment.

The landlord provided a letter on November 22, 2012 setting out the landlord's claim as against the tenants, being \$184.80 for cleaning, debris removal and re-hanging bi-fold doors; \$190.40 for carpet cleaning to remove pet odor; \$500.00 for painting and \$104.46 for the cost of paint. The landlord also claims the \$50.00 filing fee, for a total of \$1,029.66.

The landlord's witness testified to being the new manager of the rental complex and was trained by the tenant. The witness testified that the tenant showed the witness how to complete a move-out condition inspection report in another rental unit and completed a walk-through of the tenant's rental unit prior to the end of the tenancy. During that walk-through the parties had a conversation about the motorcycles wherein the tenant stated that the motorcycles would be removed or a friend would pick them up. The witness also testified that the tenant had completed touch-ups of paint on the walls and said there were many nail-holes that had been touched up with paint that did not match the paint on the walls. The tenant was a photographer and liked to hang up the photographs.

The tenant testified that the rental amount for the first rental unit was \$825.00 per month, and the tenant paid \$412.50 security deposit as well as the same amount for a pet deposit but can't find the receipts. Further, the pet deposit was paid in 3 installments before the tenant acquired a pet.

The tenant further testified that one of the motorcycles was given to the tenants' son and the tenant asked him to remove it, but he didn't. The other was offered to the tenant by a friend for parts, and could take it back in June, 2013.

Analysis

The *Residential Tenancy Act* and regulations are very specific about move-in and move-out condition inspection reports and the landlord's responsibilities respecting security deposits and pet damage deposits. I do not accept that the tenant was the landlord and therefore responsible for ensuring that the reports were completed. The tenants had a landlord that the tenants paid rent to, and that landlord was responsible. The landlord failed to ensure that the reports were completed, and therefore has not complied with the *Act*. The *Act* states that if a landlord fails to complete the reports with the tenant, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished, and I so find.

The landlord is also required under the *Act* to return both deposits to the tenant or make a claim against them 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's right to claim against them for damages is extinguished, the landlord cannot claim against them for damages, and only has one option; to return the deposits to the tenant. The landlord did not do so in this case, and I accept the testimony of the landlord's agent that the tenants' forwarding address was received in writing on September 14, 2012. Further, the parties agree that there are no rental arrears, and therefore I must find that the landlord failed to return the deposits within 15 days and the landlord must reimburse the tenants double the amount of both deposits.

In determining the amount of the deposits, I find that the tenants have failed to establish that the pet damage deposit was more than the testimony of the landlord's agent, being \$320.00. There appears to be no disagreement with the testimony of the landlord's agent that the security deposit in the amount of \$412.50 was paid on January 1, 2007 and the tenants are entitled to interest in the amount of \$12.47 on the base amount from that date to the date of this hearing as well as another \$412.50 for double the base amount. The tenants are therefore entitled to a monetary claim as against the landlord in the amount of \$837.47 for the security deposit. I have no date to satisfy me when the pet damage deposit was paid, and I accept that it was paid by the commencement of this tenancy and no interest is payable. The tenants have established a claim for double the amount of \$320.00, or \$640.00, for a total monetary claim inclusive of both deposits and interest in the amount of \$1,477.47.

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

I have reviewed the photographs and I find that the tenant caused the landlord to incur a cost for painting, and I accept the landlord's claim in the amount of \$684.80, including the cost of paint.

The Residential Tenancy Branch Policy Guidelines state that if a tenant resides in a rental unit for in excess of one year or if a tenant has a pet that is not kept in a cage, the

tenant ought to be responsible for carpet cleaning. I accept that the tenants had pets that were not kept in a cage, and the parties agree that the tenancy commenced on December 1, 2010 and ended on August 31, 2012, which is in excess of one year, and I find that the landlord has established a claim for carpet cleaning in the amount of \$190.40.

I have reviewed the invoice dated October 22, 2012 provided by the landlord, and I find that the tenants were responsible for removing the motorcycles, and the tenant admitted ownership. Therefore I accept the landlord's claim in the amount of \$60.00 for 4 hours of removal of them along with other items disposed of.

In the absence of any move-in condition inspection report, I am not satisfied that the landlord has established that the condition of the rental unit at move-out was any different than at move-in, other than as set out above, and I deny the landlord's claim for cleaning and repairs.

In summary, I find that the tenants have established a claim as against the landlord for double the amount of the \$412.50 security deposit, double the amount of the \$320.00 pet damage deposit, and interest on the security deposit in the amount of and \$12.47. I also find that the landlord has established a claim against the tenants for painting in the amount of \$684.80, removal of debris in the amount of \$60.00, and carpet cleaning in the amount of \$190.40. I also find it prudent to order that the amounts be set off from one another, and I grant the tenants a monetary order as against the landlord for the difference in the amount of \$542.27.

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

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$542.27. 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: December 24, 2012.

Residential Tenancy Branch