



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stroshin Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord 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 details section of the application claims damages caused by the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 22, 2012, the tenant did not attend. The landlord testified to serving the tenant in that manner and on that date and provided a copy of the Canada Post tracking slip and receipt as evidence of such service, and I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the conference call hearing was the landlord.

The landlord's agent testified to the tenant over-holding the rental unit after giving the landlord notice to vacate the rental unit, and I amend the application to show that the landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement in addition to the application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

All evidence and testimony provided has been reviewed and is considered in this Decision.

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 May 1, 2011 and expired on April 30, 2012 after which the tenancy reverted to a month-to-month tenancy. The tenancy ended on September 30, 2012 after the tenant gave the landlord notice to end the tenancy. Rent in the amount of \$960.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The landlord also collected a security deposit from the tenant in the amount of \$480.00 which was paid in installments of \$400.00 on April 25, 2011 and \$80.00 the following month, all of which is still held in trust by the landlord, and no pet damage deposit was collected. The landlord's agent further testified that the tenancy agreement, a copy of which was provided for this hearing contains an error, in that the tenancy agreement states that \$400.00 was paid in 2010, but it should read 2011.

The landlord's agent further testified that the tenant, having given the landlord notice to vacate the rental unit effective September 30, 2012, did not move out of the rental unit until October 1, 2012. The landlord had already secured a new tenant who was not able to move in until the tenant moved out. The new tenant had to stay in a hotel for one night with cats, and had to pay the movers storage costs. The landlord paid the new tenant's expenses and provided an invoice for moving and storage costs of \$196.00 as well as a receipt in the amount of \$172.46 for the hotel stay. The landlord's agent also testified that the tenant didn't clean the rental unit thoroughly and that cost the landlord \$125.00. Also provided for this hearing is a letter dated November 5, 2012 from the new tenant who states that the landlord reduced the rent for the first month by \$493.46 for the two invoices as well as \$125.00 for cleaning.

The landlord's agent also testified that the over-holding tenant did not pay the landlord any money for staying beyond the date of the tenant's notice, and the landlord claims \$32.00.

The tenant provided the landlord with a forwarding address in writing sometime in mid-November, 2012. A copy of the tenant's letter has been provided for this hearing, but it is not dated and the landlord's agent is not sure of the date that it was received. The

landlord filed the application for dispute resolution on November 19, 2012 and testified that it was filed within 15 days of receiving the tenant's forwarding address, and the forwarding address provided by the tenant is the address that the landlord's agent served the application and evidence for tenant to.

The landlord's agent further testified that no move-in or move-out condition inspection reports were completed by the parties.

Analysis

Firstly, the *Residential Tenancy Act* states that if a landlord does not provide the tenant with at least 2 opportunities to conduct a move-in or a move-out condition inspection report the landlord's right to make a claim against the security deposit for damages is extinguished. The *Act* also states that a landlord must return a tenant's security deposit or pet damage deposit or both 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 the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to repay the tenant double the amount of such deposits. If a landlord's right to make a claim against the security deposit or pet damage deposit for damages is extinguished, the landlord only has one option left, and that's to return the security deposit or pet damage deposit in full to the tenant and sue for the damages. In this case, the landlord's agent testified that the landlord received the tenant's forwarding address in writing in mid-November, 2012, and that the application for dispute resolution claiming against the security deposit was filed within the 15 day period, and I accept that. However, because the landlord did not cause the move-in or move-out condition inspection reports to be completed, I find that the landlord's right to claim against the security deposit for damages has been extinguished. The landlord did not claim unpaid rent or utilities or make any other claim, and therefore, I must order the landlord to repay the tenant double the amount of the security deposit, or \$960.00.

Although the landlord's right to claim against the security deposit 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.

In this case, I cannot be satisfied that the tenant failed to leave the rental unit reasonably clean, as the *Act* requires a tenant to do. A tenant is not required to leave a rental unit in a pristine condition that the landlord may want the rental unit to be left for new tenants or perspective purchasers; that is the landlord's responsibility. Further, in the absence of the move-in or move-out condition inspection reports, I have no evidence before me that the tenant left the rental unit in any different condition than the rental unit was in when the tenant moved in. Therefore, the landlord's claim for \$125.00 for cleaning cannot succeed.

The landlord has provided evidence, being a letter from the new tenant in the rental unit, that the first month's rent for the new tenant was reduced by \$125.00 for cleaning, \$172.46 for a hotel stay and \$196.00 for storage, and I am satisfied that the landlord did reduce rent by those amounts for the new tenant. The landlord has also provided receipts to substantiate those amounts, and I find that the landlord has satisfied the 4-part test for damages with respect to the hotel stay, storage costs and \$32.00 for over-holding.

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 \$480.00 in trust, and double that amount is \$960.00. I order the landlord to keep the sum of \$450.46 and I order the landlord to return the balance of \$509.54 to the tenant.

Conclusion

For the reasons set out above, I hereby order the landlord to return \$509.54 of the security deposit to the tenant.

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: February 26, 2013

Residential Tenancy Branch

