



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 damage to the unit, site or property; for a monetary order for unpaid rent or utilities; 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 tenants for the cost of the application.

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, neither tenant attended. The landlord's agent provided evidence of having served one of the 2 named tenants with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 20, 2012, and testified that the documents were sent to the forwarding address provided by that tenant. I am satisfied that that tenant has been served in accordance with the *Residential Tenancy Act*. The other tenant was not served with any documentation regarding this hearing, and I dismiss the landlord's application with respect to that tenant without leave to reapply.

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 damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- 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 20, 2012 and was to expire on February 28, 2013, although the tenants moved from the rental unit on August 14, 2012. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month. On February 17, 2012 the landlord collected a security deposit from the tenants in the amount of \$750.00 as well as a pet damage deposit in the amount of \$250.00 and both deposits are still held in trust by the landlord.

The landlord's agent further testified that the tenants were continuously late paying rent, and the landlord has provided copies of notices to end tenancy for unpaid rent that were served on the tenants. The landlord also caused a 1 Month Notice to End Tenancy for Cause to be served on the tenants on July 11, 2012, and the tenants vacated the rental unit in accordance with that notice. A copy of that notice was also provided for this hearing, and it is dated July 11, 2012 and contains an expected date of vacancy of August 14, 2012.

The landlord's agent also testified that the tenants had a small dog, and the rental unit was left in a state that was not at all reasonably clean. The carpets were left with urine smells and nothing had been cleaned.

The landlord's agent also testified that a move-in condition inspection report had been completed at the outset of the tenancy and a copy was provided for this hearing. However, the landlord sent a text message to the tenant on August 13, 2012 in response to a text message the tenant had sent the landlord on that date. The tenant had sent a forwarding address in the text message, and the landlord responded with a request to complete the move-out condition inspection report. The tenant did not reply to the landlord's message, and the landlord completed the move-out condition inspection report in the absence of the tenant. No further opportunities were provided to the tenant to participate.

The landlord's agent also testified that the tenant did not pay any rent for the month of August, 2012 and has provided a copy of a tenant ledger showing that rent payments had been continuously late for the months of March through July, 2012 and no rent had been paid for the month of August, 2012.

The landlord claims \$43.00 for garbage removal, \$224.00 for general cleaning, and \$274.40 for carpet cleaning. Receipts for those expenses have also been provided. The landlord also claims \$1,500.00 for rent owing for the month of August, 2012, as well as recovery of the \$50.00 filing fee for the cost of this application, for a total of \$2,091.40.

Analysis

The *Residential Tenancy Act* requires a landlord to provide a tenant with at least 2 opportunities to participate in a move-in and a move-out condition inspection report. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. In this case, the landlord did not offer the tenant a second opportunity to conduct the move-out condition inspection report, and therefore, I find that the landlord's right to claim against the deposits for damages is extinguished. However, the landlord's right to claim against the deposits for unpaid rent or utilities is not extinguished, nor is the landlord's right to make a claim for damages.

The *Act* also requires a landlord to make an application for dispute resolution or re-pay the deposits to the tenants within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. The *Act* states that if a landlord fails to do so, the landlord must be ordered to pay the tenant double the amount of the deposits.

The landlord's agent testified that the tenant provided a forwarding address by way of a text message on August 13, 2012 and the landlord's agent received the message and responded to it. The landlord did not make a claim against the security deposit or pet damage deposit until October 16, 2012, and testified that the tenancy ended on August 14, 2012. Therefore, I must find that the landlord has failed to comply with the *Act* with respect to the trust monies.

I have reviewed the evidence provided by the landlord and I accept that the tenant did not pay rent for the month August, 2012 and therefore, the landlord is entitled to a monetary order in the amount of \$1,500.00.

I am also satisfied that the tenant failed to leave the rental unit reasonably clean except for normal wear and tear based on the testimony of the landlord's agent and the move-in/out condition inspection report, and the landlord has established a claim for cleaning, carpet cleaning and garbage removal in the amounts claimed.

In summary, I find that the landlord has established a claim for unpaid rent in the amount of \$1,500.00, carpet cleaning in the amount of \$274.40, general cleaning of the rental unit in the amount of \$224.00, garbage removal in the amount of \$43.00, and recovery of the \$50.00 filing fee for the cost of this application, for a total of \$2,091.40. That amount must be set off from double the amount of the deposits held in trust, which combined equal \$1,000.00 and double that amount is \$2,000.00. I order the landlord to

keep the security deposit and pet damage deposit and I grant the landlord a monetary order for the difference in the total amount of \$91.40.

Conclusion

For the reasons set out above, the landlord's application as against the second named tenant on the Landlord's Application for Dispute Resolution is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the first named tenant on the Landlord's Application for Dispute Resolution, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$91.40.

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: January 22, 2013

Residential Tenancy Branch

