



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order permitting the landlord to keep all or part of the security deposit or pet damage deposit and to recover the filing fee from the tenants for the cost of this application. The details section of the landlord's application states that the landlord claims cleaning costs after the tenancy ended in the amount of \$744.34. As such, I have amended the application to include a claim for damages in that amount.

The landlord and one of the 2 named tenants attended the conference call hearing, and both parties provided evidentiary material prior to the commencement of the hearing. The parties gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony 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

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property, which includes cleaning the rental unit at the end of the tenancy?
- 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 testified that this fixed term tenancy began on July 1, 2009 and expired on January 31, 2011, and then reverted to a month-to-month tenancy which ultimately ended on September 16, 2012. Rent in the amount of \$1,150.00 per month was payable in advance on the 1st day of each month, which was reduced to \$1,000.00 and a new tenancy agreement prepared on January 28, 2010. On June 19, 2009 the landlord collected a security deposit from the tenants in the amount of \$575.00 which is

still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed.

The landlord further testified that the carpet in the rental unit was new in August, 2007, and the tenants did not clean the carpet. The cost for the landlord was \$175.84 and a copy of a receipt has been provided.

The landlord also testified that the rental unit was not left reasonably clean and provided numerous photographs to illustrate the state of the rental unit when the landlord saw it after the tenants had vacated. The photographs show cupboards with some sort of brown powder spilled inside, the floors under the appliances are in need of cleaning, and generally the rental unit is not clean. The landlord testified that the photographs were taken on September 23 and 24, 2012. The landlord has provided an invoice for cleaning by a cleaning company which shows 20 hours of cleaning for a total of \$512.50.

The landlord also claims \$56.00 for rental costs of a shop vac, and testified that it was necessary for heavy soil removal at the rental unit.

The landlord claims \$175.84 for carpet cleaning, \$512.50 for general suite cleaning, \$56.00 for shop vac rental, and \$50.00 for recovery of the filing fee, for a total of \$794.34.

The landlord emailed the tenants requesting a forwarding address, and the tenants provided the landlord with a forwarding address in writing on October 14, 2012 by way of email and the landlord responded to that email. Numerous emails were provided as evidence for this hearing by the landlord and by the tenants.

The tenant testified that the rental unit was vacated on September 16, 2012 and that the tenants left the rental unit in a clean condition, having cleaned the entire rental unit. The landlord had asked the tenants to leave the door unlocked upon their departure and to leave a key on the step inside the rental unit, which they did. The tenants were not comfortable doing so, so the tenants knocked on the neighbour's door and asked the neighbours to walk through the rental unit with the tenants. The neighbours did so and provided the tenants with an email stating that they did so at the request of the tenants, the rental unit was inspected by them on the day the tenants were vacating, the rental unit was clean and did not show any damage, although required some updating. The email also states that the tenants were asked to leave the rental unit unlocked, and it took several days before anybody attended the rental unit again. The email does not

specify whether or not cupboard doors were opened nor if appliances had been pulled out, nor does it indicate how thorough an inspection was completed.

The tenant also testified that the tenants cleaned the carpet themselves, having rented a carpet cleaning machine from Super Store.

Analysis

The *Residential Tenancy Act* requires a landlord to ensure that move-in and move-out condition inspection reports are completed at the beginning and the end of a tenancy, and the regulations go into great detail of how those inspections are to be completed. Also, the Residential Tenancy Branch website has forms to assist landlords in completing the inspections. The *Act* also states that if a landlord fails to do the inspections with the tenant, or if the landlord fails to give the tenant at least 2 opportunities to complete the inspections, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. The landlord did not cause either inspection to take place, and therefore, I must find that the landlord's right to claim against the security deposit for damages (including the claim for cleaning) is extinguished.

The *Act* also states that if a landlord does not return a security deposit 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, the landlord must be ordered to re-pay to the tenant double the amount of the deposits. If a landlord's right to claim against the security deposit for damages is extinguished, the landlord only has one option and that is to return the security deposit in full to the tenant within that 15 day period and make a claim for damages. The exception to that would be to claim against the security deposit for unpaid rent or utilities, which do not apply in this case.

In this case, the tenancy ended on September 16, 2012 and the landlord received the tenants' forwarding address in writing on October 14, 2012. The landlord made an application for dispute resolution on October 22, 2012, however, having found that the landlord's right to claim against the security deposit for damages is extinguished, I must order the landlord to re-pay the tenants double the amount of the deposits. I refer to Residential Tenancy Policy Guideline 17 which states as follows:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- **If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;**
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

(Bold text added)

In the circumstances, I must order the landlord to pay to the tenant double the amount of the security deposit, or the total sum of \$1,150.00.

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. However, 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.

The regulations also specify that the reports are evidence of the condition of the rental unit at the beginning and end of a tenancy. In this case, there were no inspection reports completed, and therefore, I have no evidence before me of the condition of the rental unit at the commencement of the tenancy. That is particularly problematic in satisfying element 2 in the test for damages. The tenant testified that the tenants rented a carpet cleaning machine, cleaned the carpets and cleaned the entire rental unit, and testified that the landlord had left the tenants instructions to leave the door unlocked and leave the key on a step inside the rental unit. The landlord testified to taking the photographs on September 23 and 24, 2012, and the neighbour's email states that it was days after the tenants left before anyone attended the rental unit.

In the circumstances, I find that the landlord has established elements 1 and 3 of the test for damages, but not elements 2 or 4. The landlord's application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to pay to the tenants the sum of \$1,150.00, and I grant a monetary order in favour of the tenants in that amount.

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 28, 2013

Residential Tenancy Branch

