



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Mgmt
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the conference call hearing and both gave affirmed testimony. The landlord's agent had one witness but that witness did not testify. The parties 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 tenant established a claim as against the landlord for a monetary order for return of all or part of the pet damage deposit or security deposit?

Has the tenant established a claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed term tenancy began on May 1, 2010 and expired after one year and then reverted to a month-to-month tenancy which ultimately ended on December 31, 2012. Rent in the amount of \$950.00 per month was originally payable under the tenancy agreement and was raised during the course of the tenancy, but the tenant did not know the latest amount of monthly rent. The tenant testified that rent was payable in advance at the end of each month for the following month and there are no

rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$487.50 as well as a fee for a deposit in the amount of \$50.00 for the remote control for the garage. The total sum of \$275.02 was returned to the tenant about a week or 2 after the tenant moved out of the rental unit which includes the \$50.00 remote control fee.

A move-in condition inspection report was completed by the parties on May 1, 2010 and a move-out condition inspection report was completed on January 5, 2013. The tenant testified to signing the move-out condition inspection report but did not agree with it and didn't read what the tenant was signing. The tenant thought it was an acknowledgement that the inspection was completed. The tenant was told that by the landlord's agent, and the tenant told that agent at the time that the tenant was not happy with the report. A copy of the report was provided for this hearing, and the tenant testified that it mentions nothing about cleaning being required. The copy of the report provided contains the move-in portion and the move-out portion on the same form for ease of comparison. At move-out the floors in the entry, living room, dining area, and both bedrooms required cleaning. Another area of the report shows handwriting that says, "clean oven 1 @ 25.00," and "Shower tiles needs cleaning 1 @ 25.00," and "balcony cleaning" but the marks beside that are illegible. Page 2 of the report shows that the tenant checked the box beside, "I do not agree that this report fairly represents the condition of the rental unit for the following reasons" but no reasons are indicated. It is signed by a landlord and by a tenant on January 5, 2013. A Security Deposit statement is also part of the form which sets out the amount of the 2 deposits, and notes suite cleaning at \$100.00, carpet cleaning at \$88.48, key replacement at \$50.00 and \$24.00 for blinds. The amount of "Deductions from security deposit" totals \$262.48 and shows a balance due to the tenant in the amount of \$275.02. A forwarding address for the tenant is also included on the form.

The rental unit had a leak under the carpet and during the tenancy, the landlord's contractors lifted the carpet and found the floor underneath to be wet and mouldy. The ordeal made a total mess; the carpet was a mess and damaged, and the tenant cleaned it several times thereafter. Industrial fans were placed in the rental unit by the landlord's agents for a week.

While there, the contractors broke the blinds and told the tenant they'd be fixed. The blinds are vertical, and some of the veins are hidden under a valance, and the tenant thought they had been fixed. During the move-out condition inspection, the landlord's agent shone a flashlight in the hidden spot and told the tenant that there were missing veins. The tenant did not break any blinds.

The tenant further testified that when moving out on December 31, 2012, no one was at the landlord's office so the tenant left the keys to the rental unit on the counter. The landlord's agents called the tenant on January 4th or 5th stating that an agents had not been available to complete the move-out condition inspection report until January 5, 2013 because they were away on vacation. The tenant attended immediately to the rental unit after the landlord's agents called.

The balcony of the rental unit had always been messy due to cedar trees dropping debris, and the balcony contains a puddle in the centre all the time. The tenant testified that the landlord's expectation to keep a portion of the security deposit for the balcony is no more than a con job by the landlord.

The tenant further testified that the rental unit was not inhabitable while the fans were in there, and did not reside there during that time, and the tenant gave a cheque for rent in an amount that was \$200.00 less than the rent payable.

The landlord's agent testified that the testimony of the tenant is correct with respect to the dates of the tenancy, amount of rent and security deposit, and the amount returned to the tenant. The landlord's agent was present for both inspections, but all the agent recalls is that the tenant disagreed with it and signed it.

The landlord's agent further testified that during the move-out condition inspection, it was noticed that the oven was dirty with burned on food, veins in the living room blinds were missing, the shower tiles had alot of soap scum which took about an hour to clean, and the balcony took about 2 hours to clean. The landlord's agents had the carpets professionally cleaned after they had dried from the fans at no cost to the tenant. The rental unit was dirty at the end of the tenancy. Also, the keys for the common area are "medical keys" which can only be cut by certain companies which is why they are so expensive, and one key was missing.

The landlord's agent also testified that the leak happened about January but the tenant didn't tell the landlord's agents about it for awhile. The concrete, underlay and carpet were dried by the fans, then re-layed and cleaned. There were stains in the carpet caused from the leak that came back after the landlord's agents had them professionally cleaned. The landlord's agent saw the carpet rolled up and fans on, but didn't personally see that blinds were missing. The other agent of the landlord (who was not at the hearing) looked under the valance with a flashlight and the veins at the end of the rods were missing. No one entered the apartment after the tenant moved out to the agent's knowledge.

During cross examination, the landlord's agent also testified that the tenant asked for a \$200.00 reduction in rent and instead got a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and stated that the boss told the agent to issue it.

Analysis

In this case, the tenant has applied for return of the remaining amount of the security deposit as well as reimbursement for loss of use of the rental unit.

Dealing firstly with the security deposit, the *Residential Tenancy Act* does not permit a landlord to arbitrarily decide to keep a security deposit or pet damage deposit. Those deposits are money held in trust by a landlord on behalf of a tenant, and the law takes a very serious view of the handling of trust monies. In particular, the *Act* requires a landlord to repay a security deposit and pet damage deposit in full or make an application to keep any portion of 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 double the amount of such deposits.

In this case, it's clear in the evidence that the tenancy ended on December 31, 2012 and the tenant provided a forwarding address in writing on January 5, 2013 on the move-out condition inspection report. The landlord has not returned the security deposit in full and has not made an application to keep any portion of it, and therefore I find that the tenant is entitled to double the amount of such deposit. I accept that the tenant received back \$275.02 and I also find that \$50.00 of that was the deposit for the remote for the garage, and the landlord has returned \$225.02 of the security deposit. The security deposit amount was \$487.50 and double that is \$975.00. Of that amount, the landlord has returned \$225.02, and I find that the tenant has established a monetary claim as against the landlord for the difference of \$749.98.

With respect to the tenant's application for a monetary order for loss of use of the rental unit due to the leak and fans, I am not satisfied as to the amount of the claim because the tenant did not provide me with dates or any evidence of any inconvenience suffered. In order to be successful in a claim for damages, which includes nominal or aggravated 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 landlord's agent testified that the tenant didn't report the leak right away, and the landlord's agent did not know the tenant wasn't living in the rental unit due to the fans. It appears that the tenant decided to reduce rent by \$200.00 but the landlord's response was to issue a notice to end tenancy for unpaid rent.

In the circumstances, I find that the tenant has failed to establish elements 3 or 4 in the test for damages, and that portion of the tenant's application is hereby dismissed without leave to reapply.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$799.98.

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: April 19, 2013

Residential Tenancy Branch

