



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 a monetary order for damage to the unit, site or property; 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 landlord and the tenant both attended and gave affirmed testimony. The landlord provided evidentiary material to the Residential Tenancy Branch and to the tenant prior to the commencement of the hearing. 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 landlord established a monetary claim as against the tenant for damage to the unit, site or property?

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 December 30, 2011, expired on June 30, 2012 and was renewed again to expire on August 31, 2012, but the tenant did not move out of the rental unit after giving the landlord notice to vacate on August 31, 2012. Rent in the amount of \$1,400.00 per month was payable in advance on the

1st day of each 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 \$700.00.

The parties appeared at a Dispute Resolution Hearing in January, 2013, and the Arbitrator for that hearing ordered the landlord to repay the tenant double the amount of the security deposit, less \$100.00 that the tenant had agreed that the landlord could keep for cleaning the rental unit at the end of the tenancy. The monetary amount ordered in favour of the tenant was \$1,200.00, being \$700.00 security deposit, less \$100.00, and then double the balance. The landlord has not paid that amount to the tenant, but testified that the Arbitrator from that hearing told the landlord that a claim could be made against the tenant for damages.

The landlord further testified that no move-in or move-out condition inspection reports were completed.

The tenancy was supposed to end on August 31, 2012, but the tenant contacted the landlord and stated that the move would take place on September 1, 2012 at 8:00 a.m., and the landlord agreed. However, the tenant did not move out as agreed, and was still in the rental unit when the landlord's cleaners attended. The landlord and the cleaners helped the tenant finish packing and moving out, and the tenant was not moved out before 2:00 p.m. on September 1, 2012. The landlord claims one day of over-holding in the amount of \$45.16.

The landlord further testified that during the tenancy the tenant broke a glass sink in the bathroom. The landlord hired a contractor to remove the broken sink and replace it, and the landlord purchased the new sink. Copies of invoices for the new sink and contractor's fees were provided for this hearing. The first receipt is dated February 5, 2012 in the amount of \$349.00 for the purchase, and the second is an invoice from the contractor for removal, installation of a new sink and P-trap, caulking and disposing of debris for a total cost of \$225.00. The tenant had told the landlord that the sink broke on its own while the tenant's spouse was in the bathroom.

The landlord also testified that the tenant broke the sink again during the tenancy and the landlord has provided a receipt for the purchase of a new one dated September 3, 2012 in the amount of \$502.88 and a copy of an invoice from the contractor for removal and installation of a new sink and caulking for a total of \$215.00.

The first sink was about 4 or 5 years old when the tenants moved into the rental unit and there were no problems. Further, there have been no problems with the new glass sink since new tenants moved in.

The landlord claims \$717.88 as against the tenant for replacement of the 2 sinks.

The tenant testified that the sink was made of tempered glass. The tenant had turned on the hot water and then cold water which caused the sink to explode, and the tenant had cuts from the debris. The tenant called the manufacturer who advised that such bowl types of tempered glass sinks require a delicate installation, and tools such as wrenches cannot be used; tightening of hardware must be done by hand. No evidence of such advice has been provided.

The tenant further testified that the second time the sink broke was as a result of a perfume bottle falling into it. The sink exploded but the perfume bottle didn't break.

After the sink broke the first time, the landlord was going to have a normal sink installed, which the tenant preferred, but the contractor convinced the landlord to get another glass one. The tenant watched the contractor install the new one, and saw that the contractor used a wrench to tighten it, but the tenant did not suggest anything to him.

The tenant disagrees that the landlord was told the first sink broke on its own while the tenant's spouse was in the bathroom; the tenant had told the landlord that the tenant was in the bathroom at that time, not the spouse of the tenant.

The tenant agrees to the landlord's claim in the amount of \$45.16 for over-holding.

Analysis

Firstly, with respect to the landlord's claim for over-holding, the tenant has agreed to the amount claim, and therefore I find that the landlord has established a claim as against the tenant in the amount of \$45.16.

With respect to the landlord's application for an order permitting the landlord to keep all or part of the security deposit, I find that that matter has already been dealt with by dispute resolution, and the landlord's application is hereby dismissed.

The *Residential Tenancy Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. However, a tenant is not required to make repairs for reasonable wear and tear.

Also, 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, although there are no move-in or move-out condition inspection reports to use as comparisons with respect to damages to the rental unit, the tenant does not deny that the sink broke twice. Therefore, I find that the damage exists. I am also satisfied that the landlord has proven the amount of such damage or loss by providing copies of receipts and invoices for purchase and installation of the glass bathroom sink twice during the tenancy.

In determining the issue, I consider the fact that the sink broke on one occasion and the landlord chose to replace it with a similar glass sink. Regardless of what the tenant had told the landlord about how the sink broke the first time or who was in the bathroom at the time, I find that the landlord has failed to mitigate any loss. The landlord replaced the sink with another glass sink. I further find that the landlord has failed to establish that the damage or loss occurred as a result of the tenants' failure to comply with the *Act* or the tenancy agreement. I fail to see how the landlord's evidence proves that the sink broke as a result of the actions or neglect of the tenant.

In summary, I find that the landlord has established a claim as against the tenant for over-holding in the amount of \$45.16. The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit has already been dealt with and cannot be considered again, and that portion of the landlord's application is hereby dismissed without leave to reapply.

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

Conclusion

For the reasons set out above, the landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$95.16.

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: May 15, 2013

Residential Tenancy Branch

