



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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.

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, evidence, and notice of hearing documents by registered mail on May 1, 2013, the tenant did not attend. The landlord provided evidence of the registered mail and testified that the documents were sent on that date and in that manner and I am satisfied that the tenant has been 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's agent.

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 unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, sit or property?

- 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 tenancy began on April 1, 2012 and the parties entered into a new fixed term tenancy agreement on January 29, 2013 for a tenancy to begin on April 1, 2013 and to expire on September 30, 2013. The tenant gave notice to the landlord and vacated the rental unit on or about April 11, 2013. Rent in the amount of \$1,195.00 per month was payable in advance on the 1st day of each month. On March 23, 2012 the landlord collected a security deposit from the tenant in the amount of \$597.50, none of which has been returned to the tenant.

A move-in condition inspection report was completed by the parties on March 29, 2012 and the same form was used for the move-out condition inspection which was completed by the parties on April 12, 2013. The tenant agreed to a deduction for cleaning in the amount of \$200.00 by signing a notation to that effect on the move-out condition inspection report. The landlord's agent testified that the agreement also included an estimated amount for carpet cleaning, but no dollar figure is noted. The landlord's agent called the tenant to advise that the carpet cleaning amount was \$88.20, and has provided receipts for the \$200.00 cleaning bill at 8 hours as well as one for \$88.20 for carpet cleaning.

A copy of the inspection reports was provided for this hearing and it shows that at the commencement of the tenancy the carpets in both of the 2 bedrooms were dirty. It also shows that at the commencement of the tenancy the floors in the entry/hall, kitchen, dining area, main bathroom and ensuite needed cleaning, as well as the cabinets in both bathrooms, the dishwasher, and the dryer. The report also shows a forwarding address of the tenant, is signed and dated April 12, 2013.

A copy of the tenancy agreement was also provided for this hearing which specifies rent in the amount of \$1,195.00 per month payable on the 1st day of each month and an additional \$25.00 for each cheque which is returned to the landlord for N.S.F. funds and \$25.00 for each rent cheque that is not delivered to the landlord by the first of each month. Two other provisions are also contained in the tenancy agreement regarding payment to the landlord as follows:

“If the tenant fails to pay rent in any given month, on or before the due date, then the Tenant shall be required to pay to the Landlord a penalty of Five Dollars (\$5.00) for each day that the rent is late, without prejudice to any other available remedies of the Landlord.

“In the event that the Tenant fails to pay rent in any given month, on or before the due date, the Tenant shall be required to pay to the Landlord a penalty of Twenty Five Dollars (\$25.00) for the delivery of any notices without prejudice to any other available remedies of the landlord.”

The landlord's agent testified that the tenant was in arrears of rent which has now accumulated to \$2,300.00 which the landlord claims as against the tenant as well as late fees in the amount of \$200.00 and N.S.F. fees in the amount of \$225.00.

A copy of a tenant ledger was also provided for this hearing. The ledger shows that the landlord has charged a \$25.00 fee for N.S.F. fees as well as \$25.00 for late fees 7 times during the tenancy for each rent cheque that was returned for insufficient funds. The ledger also shows that as at April 3, 2013, the tenant was in arrears of rent the sum of \$2,725.00, which includes all of those fees.

The landlord's application claims \$2,300.00 in outstanding rent, \$225.00 for N.S.F. fees, and \$200.00 for late fees, for a total claim of \$2,725.00. The landlord's agent testified that in addition, the landlord claims \$88.20 for carpet cleaning and \$200.00 for cleaning that the tenant agreed to in writing, as well as recovery of the \$50.00 filing fee for the cost of the application.

Analysis

Firstly, with respect to the Tenancy Agreement, I find that the fees and penalties are not lawful. The regulations to the *Residential Tenancy Act* specifies that a landlord may charge a tenant an administration fee of not more than \$25.00 for late payment of rent or for a fee charged by a financial institution for the return of a tenant's cheque if the tenancy agreement provides for that fee. A landlord may also charge a service fee that the landlord is charged by a financial institution for the return of a tenant's cheque, but the landlord must provide that amount. The regulations do not allow a landlord to charge \$25.00 for a late fee and \$25.00 for an N.S.F. fee; it's one or the other in addition to the amount charged by the financial institution proven by the landlord. In this case, the landlord was provided the opportunity to provide evidence of the amount charged to the landlord, but did not provide it. Therefore, I find that the landlord is not entitled to the \$25.00 fee twice for each month that a rent cheque was returned N.S.F.

I have examined the tenant ledger provided by the landlord, and I find that the landlord has claimed the late fees and the N.S.F. fees throughout the tenancy that the landlord was not entitled to collect from the tenant. The landlord has included the fees in the ledger and I find that the \$25.00 for each N.S.F. cheque must be discounted and the amount reduced to \$25.00 for the late fee only as provided in the regulations and the tenancy agreement. The ledger shows that the amount of \$2,725.00 is owed by the tenant for unpaid rent and late fees, and I find that the amount the landlord is entitled to is \$2,500.00.

With respect to the landlord's claim for carpet cleaning and general cleaning, I find that the tenant has only agreed to one amount, being \$200.00 for cleaning. I do not accept that the tenant agreed to any amount in particular for carpet cleaning, and I decline to order the tenant to pay for additional carpet cleaning when the carpets clearly required cleaning at the commencement of the tenancy.

The landlord currently holds a security deposit in the amount of \$597.50, I find that the landlord has established a monetary order for unpaid rent in the amount of \$2,300.00 and late fees in the amount of \$200.00, damages in the amount of \$200.00, and recovery of the \$50.00 filing fee for the cost of the application. The landlord currently holds a security deposit in the amount of \$597.50 which I order the landlord to keep as a set off from the amount owed to the landlord, and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,152.50.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$597.50 security deposit and I grant the landlord a monetary order as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,152.50.

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: July 25, 2013

Residential Tenancy Branch