



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD MNDC FF

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order for damages and loss and to retain the security deposit in partial satisfaction of the claim.

The application was also convened to hear a cross application by tenant for the return of the tenant's security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided for the Tenant's Application

- Whether the tenant is entitled to the return of the security deposit paid.

Issues to be Decided for the Landlord's Application.

- Whether the landlord is entitled to compensation under section 67 of the *Act* for cleaning and damages.

Background and Evidence

The tenancy began on November 1, 2011. The tenancy ended June 1, 2013. The monthly rent was \$1,050.00. A security deposit of \$525.00 was paid and a pet damage deposit of \$525.00 was paid.

The landlord is seeking monetary compensation of \$3,872.10, including the following:

- \$200.00 estimate for missing headboard
- \$200.00 estimate for dining room table damage
- \$400.00 estimate for dining room chair upholstery
- \$200.00 estimated fines for dog feces and parking violations
- \$24.00 still owed for car damage to corner of building
- \$50.00 for damage to walls
- \$1,667.50 plus GST estimated for repairs to structure of building next to garage door
- \$500.00 estimated to replace carpet for pulled threads and urine contamination
- \$300.00 estimate to replace cracked toilet. Toilet purchased for \$169.00 plus tax
- \$35.00 estimate to repair grass from dog damage
- \$28.56 cost for damaged door stoppers (\$4.25 x 6 plus 12% tax)
- \$140.69 to replace locks

In addition to a list of damages, the landlord submitted into evidence a copy of the tenancy agreement, a copy of a One Month Notice to End Tenancy for Cause, copies of communications and 47 photos. Also submitted was a copy of an invoice for the \$24.00 still outstanding for the previous damage repairs to the building and a copy of the \$1,667.50 estimate for structural damage, that the landlord alleges was caused by the tenants or guests of the tenants.

The landlord did not submit any other copies of invoices, estimates or receipts into evidence. In addition there were no copies of a move-in or move-out condition inspection report.

During the landlord's testimony, the landlord provided detailed descriptions of the damages to the suite and the tenant's failure to properly clean portions of the suite including carpet shampooing. The landlord stated that the carpets cost \$450.00 to clean and the labour for cleaning of the suite was valued at \$200.00.

The landlord acknowledged that, although the walls were patched and painted, the new toilet was purchased and the door stoppers were replaced, most of the repairs were not yet completed. The landlord testified that the rental unit was re-rented, but, as part of the tenancy, they made commitments to the new residents to repair and replace the damaged finishes.

The tenant is disputing all of the landlord's monetary claims listed above except the damage to the toilet and the door stoppers. The tenant acknowledged that they left part of the rental unit, such as the oven, not clean and that they did not shampoo the carpets.

Analysis – Tenant's Claim for Return of Security Deposit

In regard to the return of the security and pet damage deposits, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security and pet damage deposit to the tenant or make an application for dispute resolution to claim against the deposits.

I find that the tenant did not give the landlord written permission to keep the deposits.

I find that the tenant mailed their written forwarding address to the landlord on July 8, 2013, which is deemed under the Act to have been received in 5 days, that being July 13, 2013. I find that the landlord then made their application on July 26, 2013. Accordingly, I accept that the landlord did file the application, seeking an order to keep the deposit, within the required 15 days.

I find that security and pet damage deposits are always considered a credit in favour of the tenant and the funds are held in trust. Therefore, I find that the landlord is currently holding \$1,050.00 in trust for this tenant.

Analysis – Landlord's Application

With respect to a monetary claim for damages, it is important that the evidence furnished by each applicant/claimant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act under sections 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the landlord's failure to comply with the Act, and the absence of these reports, has hindered the landlord's ability to prove that the tenant caused the damage and that the tenant should be held accountable for the costs of cleaning or repairs.

Even if I accept as a fact that the damage, as shown in the photos, did exist at the end of the tenancy, it is not possible to verify what condition the rental unit was in when the tenancy began due to the missing move-in condition inspection report. Therefore, I am unable to determine what damage had actually occurred during the tenancy, by the actions of these tenants. For this reason, I must find that most of the landlord's monetary claims fail to meet element 2 of the test for damages and must be dismissed.

In addition to the above, I find that the landlord did not furnish sufficient proof of the claimed expenditures. I therefore find that the landlord's monetary claims for the following, also failed to satisfy element 3 of the test for damages:

- \$200.00 estimate for missing headboard
- \$200.00 estimate for dining room table damage
- \$400.00 estimate for dining room chair upholstery
- \$200.00 estimated fines for dog feces and parking violations
- \$50.00 for damage to walls
- \$1,667.50 for repairs to structure of building next to garage door
- \$500.00 estimated to replace carpet
- \$35.00 estimate to repair grass from dog damage
- \$28.56 cost for damaged door stoppers (\$4.25 x 6 plus 12% tax)
- \$140.69 to replace locks.

Accordingly, I find that the above claims are not adequately supported by evidence and must therefore be dismissed.

However, I find that the claims for \$24.00 still owed for the car damage to the building, \$189.28 for a new toilet, \$28.56 to buy new door stoppers are claims that are sufficiently supported by the evidence and the landlord is entitled to compensation.

I also find that the landlord's claim for \$450.00 for the carpet cleaning and \$100.00 for additional cleaning of the suite are justified claims under section 37 of the Act, and that these also meet the test for damages.

Based on the evidence I find that the landlord is entitled to total compensation of \$791.84.

Having found that the landlord is entitled to be compensated \$791.84, I order that the landlord retain this amount from the tenant's security and pet damage deposit of \$1,050.00 in full satisfaction of the claim. I find that this leaves \$258.16 still outstanding in favour of the tenant for the remainder of their deposits.

I hereby grant the tenant a Monetary Order in the amount of \$258.16. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's and the tenant's applications are dismissed without leave. Each party is responsible to pay for their own application costs.

Conclusion

The landlord is partly successful in the cross application and is ordered to retain a portion of the tenant's security and pet damage deposit, the remainder of which is ordered returned to the tenant

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: October 29, 2013

Residential Tenancy Branch

