



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Surrey 108 Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied 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 details portion of the landlord's application specifies damage to the rental unit or site.

The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit 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 hearing, and the landlord called one witness. The parties and the witness each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2012 and ended on January 8, 2014. Rent in the amount of \$500.00 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 at the time collected a security deposit from the tenant in the amount of \$250.00. No written tenancy agreement was signed, and no move-in or move-out condition inspection reports were completed.

The tenant further testified that the tenant gave to the resident manager written notice to end the tenancy on December 1, 2013, to vacate on January 1, 2014. The notice also contained the tenant's forwarding address, however the tenant did not keep a copy.

The tenant also testified that when he first looked at the apartment, it was not clean at all, and nothing had been done for a new tenant. The cupboards were dirty, the fridge didn't work right, butter, cheese and other food was left in the fridge, clothes were left in the closet and food in the cupboards. The landlord at the time was told that it wasn't cleaned, but he simply replied that if the tenant didn't take the unit as it was, the landlord would find another tenant. The tenant really only needed a place for sleeping, but because the rental unit was inexpensive and close to public transit, the tenant agreed to move in. There was no maintenance person, and the landlord lived in a different community.

The landlord's agent testified that the landlord company purchased the rental building sometime in 2012 after the tenant had moved in. The rental unit is one of 10 apartments in an apartment complex.

The company's owners went through all 10 rental units in November, 2012. They did not look in all closets, cupboards or the fridges, but didn't see the damages that were evident at the end of this tenancy. The landlord has provided photographs of the rental unit, showing a cupboard door hanging off its hinges, broken drawers, unclean fridge, stove, toilet, bathroom sink and cupboard under a sink. Also provided is an invoice dated "Jan & Feb 2014," which specifies a charge of \$250.00 for cleaning the rental unit. The landlord's agent testified that if the rental unit had been in that condition at the outset of the tenancy, the landlord does not believe a tenant would have taken possession.

The landlord's agent further testified that when the building was purchased, the landlord did not receive a written tenancy agreement or a move-in condition inspection report from the previous owner, but does agree that the landlord currently holds a security

deposit in the amount of \$250.00. The landlord claims \$250.00 from the tenant for cleaning the rental unit, and stated that the damages exceed the amount of the deposit, although the landlord is only claiming the cleaning costs. The landlord requests an order that the landlord be permitted to keep the security deposit to cover the cleaning costs.

The landlord's witness testified that he is the resident manager of the rental complex and has been for about a year, but was not employed by the landlord at the outset of this tenancy.

The witness further testified that he is not sure when the tenant moved out, but the tenant gave the witness notice to move in writing and the witness gave the note to the company. The witness does not believe that the tenant's forwarding address was on the note because the tenant told the witness that he was leaving the country and would deal with the security deposit when he returned. The tenant then asked for 15 more days to vacate, the landlord agreed, and the tenant paid for another half month of rent. The witness is not sure when the tenant left; he put the key in the witness' office, and the witness went in and took pictures.

The witness also testified that the rental unit was not clean at the end of the tenancy; carpet, walls and the bathroom were left dirty, and kitchen cupboards were broken.

In closing, the landlord's agent stated that the notice to end the tenancy provided by the tenant to the landlord, which has not been provided as evidence for this hearing, could be obtained from the landlord company, and the parties agreed that the notice be provided as evidence after the hearing concluded. The landlord's agent agreed to send a copy by facsimile to the Residential Tenancy Branch and a copy to the tenant. The notice has been received, and it contains an address of the rental unit.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit in full or apply for dispute resolution claiming against 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 tenant testified that he moved out of the rental unit on January 8, 2014 and the landlord's witness testified that the tenant paid rent up to January 15, 2014. Therefore, I find that the tenancy ended on January 15, 2014.

The tenant also testified that the notice given to the landlord contains a forwarding address, however the address on the notice is the address of the rental unit, and I find

that the tenant did not provide a forwarding address until serving the landlord with the tenant's application and notice of hearing documents for this hearing. Therefore, I find that the tenant is not entitled to double recovery of the security deposit.

The *Act* also states that a landlord must provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. It also states that a landlord's obligations in that regard apply whether or not the tenant knew of a breach of that requirement when the tenant took possession of the rental unit. The *Act* also places the onus on the landlord to ensure that the parties together conduct a move-in and a move-out condition inspection report, and that the landlord must provide the tenant with at least 2 opportunities to complete the inspection reports. The regulations go into great detail of how that is to happen, and also states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. If a landlord fails to do so, the landlord's right to make a claim against the security deposit for damages is extinguished. I find that the landlord did not provide the tenant with at least 2 opportunities to complete either inspection. Therefore, I dismiss the landlord's application to keep the security deposit.

When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant testified that the rental unit was unclean at the commencement of the tenancy and the landlord at that time chose not to complete the report and told the tenant to take it or leave it. The tenant decided to take the unit because of its cost and proximity to public transit, and I accept that testimony.

Where a party makes a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

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 claims cleaning costs in the amount of \$250.00 and has provided evidence of that cost. I am satisfied that the landlord has established element 3.

I have reviewed the photographs provided by the landlord and I find that the appliances, cupboards, sinks, toilet and linoleum are old and in need of more attention than

cleaning. I am not satisfied that the landlord has established that the rental unit was any cleaner at the commencement of the tenancy than at the end of the tenancy, and the landlord has failed to establish elements 1 and 2 in the test for damages. The landlord's application for a monetary order for damage to the unit, site or property 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.

I hereby grant a monetary order in favour of the tenant in the amount of \$300.00 for return of the security deposit and recovery of the filing fee.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application for an order permitting the landlord to keep the security deposit is dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$300.00.

This order is final and binding 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: August 15, 2014

Residential Tenancy Branch

