



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 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 tenants for the cost of the application.

The landlord and one of the tenants attended the call, and both gave affirmed testimony. The landlord also 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 tenants 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?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 1, 2013 and ended on June 30, 2014. Rent in the amount of \$1,050.00 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 tenants in the amount of \$525.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that no move-in condition inspection report was completed by the parties at the outset of the tenancy because the landlord was not aware that it was required, however the landlord's sister walked through the rental unit with the tenants and provided the tenants with a key. Also, the landlord and the landlord's sister went through the rental unit without the tenants, and the appliances were new.

The landlord did not complete a move-out condition inspection with the tenants present because she did not know it was required. However, the stove-top was chipped and cracked at the end of the tenancy and had to be replaced. The tenant had told the landlord's sister that the tenant dropped something on it from the cupboard above. A copy of a quote from a Maytag company for a new stove-top, and labor costs in the amount of \$517.34 has been provided, which the landlord claims as against the tenants.

The landlord also testified that the toilet tank handle was broken during the tenancy, and has provided a receipt from Walmart for replacement at the cost of \$8.27 which the landlord also claims against the tenants.

The landlord also claims carpet cleaning costs in the amount of \$94.00. No receipt has been provided, however the landlord testified that the tenant advised that she had cleaned the carpet, but really hadn't and the tenant had a dog in the rental unit and did not pay a pet damage deposit. The landlord claims \$94.00 as against the tenants for carpet cleaning.

The landlord received the tenants' forwarding address in writing on June 27 or 28, 2014.

The tenant testified that the tenants did not tell the landlord or the landlord's sister that the carpet had been cleaned; it had not been cleaned by the tenants.

The tenant further testified that the toilet tank handle was broken at the outset of the tenancy. The handle came off and the tenants put it back on, and the tenant claims that the damage was general wear and tear and not malicious damage.

The tenant also testified that during the tenancy, the tenant dropped a can of Pam from the cupboard onto the stove-top and it chipped the stove-top.

Analysis

The *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed with the tenants present at the beginning of the tenancy and at the end of the tenancy. The regulations go into great detail about how that is to happen. The *Act* also states that if a landlord fails to

complete them in accordance with the regulations, the landlord's right to make a claim against the security deposit or pet damage deposit for damages is extinguished. Therefore, I must find that the landlord's right to make a claim for damages against the security deposit is extinguished, and I so find.

However, the landlord's right to make a claim for damages is not extinguished. In order to be successful in such a claim, the onus is on the landlord to establish 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 tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce any damage or loss suffered.

The *Act* also states that a tenant must repair any damage caused by a tenant, but is not required to pay for damages caused by normal wear and tear.

With respect to the stove-top, I am satisfied in the evidence of the amount for its repair or replacement, however, I am not satisfied that the landlord has established that the damage is beyond normal wear and tear. The parties agree that the tenant dropped something out of the cupboard onto the stove-top causing a chip or a crack. Neither party has alleged that it was caused by anything more than an accident, which I find is normal wear and tear.

With respect to the toilet tank handle, the tenant testified that it was broken at the outset of the tenancy, it fell off, and the tenants put it back on. In the absence of any evidence of its condition at the beginning of the tenancy, I find that the landlord has failed to establish that the damage exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement.

With respect to carpet cleaning, a tenant is expected to clean carpets at the end of a tenancy if the tenancy lasts for a year or longer or if the tenant has a pet that is not kept in a cage. The landlord testified that the tenants had a dog, and the tenant testified that the carpets were not cleaned at the end of the tenancy. However, I have no evidence before me establishing the cost of carpet cleaning, and therefore, I find that the landlord has failed to satisfy element 3 in the test for damages.

Since the landlord has not been successful with the application respecting damages, the landlord is not entitled to keep the security deposit. Also, since the landlord has not been successful, the landlord is not entitled to recover the filing fee from the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

This order is final and binding.

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: December 02, 2014

Residential Tenancy Branch

