



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and pet damage deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from May 13, 2013 to June 30, 2014. By way of initialled manual amendments to the original tenancy agreement, after the end of the original fixed term, tenancy was extended for an additional fixed term ending June 30, 2015. Throughout the tenancy, monthly rent remained unchanged from \$1,350.00, and rent was due and payable in advance on the first day of each month. A security deposit of \$675.00 and a pet damage deposit of \$675.00 were collected. While there is a manually written, broad summary of the condition of the unit, a detailed move-in condition inspection report was not completed.

By email dated July 30, 2014, the tenant gave notice to end tenancy effective September 01, 2014. While the parties completed a walk-through of the unit together at the end of tenancy, a move-out condition inspection report was not completed. In early September 2014, new renters began moving their possessions into the unit. However, payment of rent was not effective until September 15, 2014.

It is understood that the tenant provided the landlord with her forwarding address by either email or text message around mid-September 2014. Thereafter, the landlord's application for dispute resolution was filed on September 19, 2014. In her application the landlord seeks miscellaneous tenancy - related compensation as detailed below.

Analysis

At the outset, the particular attention of the parties is drawn to the following legislation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: **Leaving the rental unit at the end of a tenancy**

REGULATION

Part 3 – Condition Inspections (sections 14 to 21)

Based on the documentary evidence and testimony of the parties, and in consideration of the relevant statutory provisions as well as Residential Tenancy Policy Guidelines, the various aspects of the landlord's claim and my related findings are set out below.

\$900.00: repairs (labour and materials) to laminate flooring in kitchen / living area

The landlord claims that a particular area of flooring had lifted "due to water damages from pets urine and / or water bowl placement." However, the tenant claims that she took appropriate measures to prevent any water damage to the floors, at least in relation to where the pet water bowl was placed. The tenant also claims that "water damage is found throughout the apartment, not in localized areas," and she attributes this variously to "wear and tear," structural factors ("concrete floor that is too wet"), and improper installation ("no sealant was used").

In view of conflicting testimony and perspectives related to the cause(s) of floor damage, and in the absence of detailed results of move-in and move-out condition inspection reports, or documentary evidence of an authoritative assessment by an appropriately qualified trades person, I find that the landlord has failed to meet the burden of proving entitlement to this aspect of the claim, and it is therefore dismissed.

\$126.00: removal of ceiling fan in living room and re-installation of original light fixture

The tenant claims she had approval for replacing the original light fixture with a ceiling fan, and the landlord disputes this. However, there is no dispute that the original light fixture was safely stored and that it was able to be reinstalled after the end of tenancy.

Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises.” Under the heading RENOVATIONS AND CHANGES TO RENTAL UNIT, this guideline provides in part:

1. Any changes to the rental unit and / or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and / or residential property to its original condition before vacating, the landlord may return the rental unit and / or residential property to its original condition and claim the costs against the tenant.

In view of the conflicting testimony of the parties, and in the absence of any documentary evidence in support of the perspective of either party around whether or not consent was given to remove the original light fixture, I find that the landlord has established entitlement limited to **\$63.00**, or ½ the amount claimed.

\$120.00: *plumbing (labour & materials) for service on faucet*

In the absence of detailed comparative results of move-in and move-out condition inspection reports, and in consideration of the impact of normal wear and tear during a tenancy lasting approximately 14 months, as well as the absence of any evidence concerning the age of the faucet, I find that the landlord has failed to meet the burden of proving entitlement to recovery of this particular cost, and it is therefore dismissed.

\$300.00: *replacement of 2 key FOBS*

The landlord claims that the tenant was provided with 2 key FOBS at the start of tenancy, and that neither of these was returned at the end of tenancy. For her part, the tenant claims that she was given only 1 key FOB when tenancy began, and she does not dispute that she lost it and so was unable to return it when tenancy ended. In support of the landlord’s claim, a page with manual documentation initialled by both parties was submitted in evidence. In addition to other things, notations are made to the effect that “2 Fobs” were given to the tenant on May 15, 2013.

While I find that the documentary evidence supports the landlord's claim that 2 key FOBs were given to the tenant at the start of tenancy, and the parties agree that no FOBs were returned by the tenant at the end of tenancy, in the absence of a receipt in evidence to support any particular replacement cost incurred, I find on balance that the landlord has established entitlement to a claim in the limited amount of **\$150.00**.

\$10.20: *cost of registered mail*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlord's application is hereby dismissed.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with this application, I find that the landlord has also established entitlement to recovery of the full filing fee.

Sub-total entitlement: \$263.00 (\$63.00 + \$150.00 + \$50.00)

Conclusion

The landlord is ordered to retain **\$263.00** from the security / pet damage deposits. Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant for the balance of the security / pet damage deposits in the amount of **\$1,087.00**.

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: April 22, 2015

Residential Tenancy Branch

