



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC
OPR, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord has applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for breach of an agreement; 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.

Both parties attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other respecting 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.

During the course of the hearing, the landlord withdrew the applications for an Order of Possession.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit or pet damage deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the pet damage deposit or security deposit?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site 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, and more specifically for late rent fees and over-holding?
- Should the landlord be permitted 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 tenant testified that this month-to-month tenancy began on November 1, 2014 and the tenant moved out completely on February 3, 2015. Rent in the amount of \$2,000.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 as well as a pet damage deposit in the amount of \$1,000.00, both of which are still held in trust by the landlord.

The tenant further testified that the tenant fell into arrears of rent for January, 2015, having paid \$700.00, and the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 19, 2015 which contained an expected date of vacancy of January 31, 2015. The tenant moved out of the rental unit and the tenant gave the landlord's girlfriend a letter on February 5, 2015 which contained the tenant's forwarding address.

The tenant agrees to reimburse the landlord for a broken window and carpet cleaning, but not for general cleaning of the rental unit. At the end of the tenancy the parties walked through the rental unit and the landlord was happy with the cleanliness of it.

A move-in condition inspection report was completed by the parties at the commencement of the tenancy, but no move-out condition inspection report was completed at the end of the tenancy.

The landlord testified that the photographs provided for this hearing show mattresses, tires and other things left behind by the tenant for the landlord to dispose of. Also provided is a letter from the tenant dated February 9, 2015 giving the landlord entitlement to dispose of remaining outside contents.

The landlord received the tenant's forwarding address in the landlord's mailbox, but is not sure if it was on February 6, or perhaps February 7, 2015.

The landlord claims unpaid rent to the 9th of February because the tenant was still packing things up.

The landlord has also provided a CD showing photographs and a recording that the landlord testified was made during the walk-through at the end of the tenancy.

The landlord's application seeks a monetary order in the amount of \$2,713.82, being \$357.00 for the cost of cleaning the rental unit, \$136.50 for carpet cleaning, \$200.55 for repair to the broken window, \$26.40 for garbage disposal, \$1,300.00 for January's rent, \$100.00 for late fees, and 9 days of rent for February at \$65.93 per day. The landlord testified that he calculated the amount by dividing the number of days per year at \$2,000.00 per month (or \$24,000 per year). Receipts for the carpet cleaning, garbage disposal, and window replacement have been provided. Also provided is an invoice for cleaning the rental unit dated February 11, 2015 for \$68.00 per hour totalling \$357.00 including tax. No move-in or move-out condition inspection reports have been provided.

Analysis

The *Residential Tenancy Act* requires a landlord to ensure that move-in and move-out condition inspection reports are completed, and that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the tenant testified that a report was completed at move-in but not at move-out, and neither party has provided any reports. The *Act* also states that if a landlord fails to complete the reports in accordance with the regulations, the landlord's right to claim against the security deposit or pet damage deposit is extinguished.

However, the landlord's right to make a claim against the deposits for unpaid rent is not extinguished, and the tenant admits to owing \$1,300.00 for unpaid rent, and late fees for December, 2014 and January, 2015 rent. I have reviewed the tenancy agreement and it is clear that the parties agreed to a late fee of \$25.00, and I am satisfied that the landlord is owed \$1,350.00.

With respect to the landlord's claim for damages, the tenant agrees to the window repair cost at \$200.55 and to carpet cleaning for \$136.50. I also find that the tenant agreed in writing that the landlord could dispose of unwanted items in the yard at the end of the tenancy, and I am satisfied that the landlord has established the cost of \$26.40. I have also reviewed the photographs and I've heard the recording provided by the landlord. However, I have no evidence to satisfy me of the condition of the rental unit at the beginning of the tenancy, and the landlord's application for \$357.00 for cleaning is dismissed.

With respect to the landlord's claim for over-holding, the landlord testified that it took until the 9th day of February for the tenant to have everything moved from the rental unit, however, the tenant testified that all items were moved out by the 3rd of the month. Although the tenant signed the authorization for the landlord to dispose of unwanted items on February 9, 2015, I am not satisfied that the landlord is entitled to rent for 9 days. Further, I have no evidence before me to suggest when the rental unit was re-rented or if it was. I accept that, since rent was payable on the 1st day of each month, the landlord has established 3 days of rent owing for over-holding, being \$2,000.00 divided by 28 days in the month equals \$71.43 per day, multiplied by 3 days equals \$214.29.

With respect to the tenant's application, the tenant testified that the landlord's girlfriend was given a note that contained the tenant's forwarding address in writing on February 5, 2015, and the landlord testified that it was received in the landlord's mail box on either the 6th or 7th of February. A landlord is required to return security deposits and pet damage deposits to the tenant in full or make an application for dispute resolution 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. If the landlord fails to do either, the landlord must be ordered to repay the tenant double the amount of the deposits.

In this case, the landlord did not return either of the deposits to the tenant and made the application for dispute resolution claiming against the deposits on March 13, 2015, clearly beyond the 15 days provided by the *Act*. Therefore, I find the tenant is entitled to double recovery, or \$4,000.00.

Having found that the landlord is owed \$1,927.74 and the tenant is owed \$4,000.00, I find it necessary to set off the amounts, and I grant a monetary order in favour of the tenant for the difference in the amount of \$2,072.26.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, the landlord's applications for an Order of Possession are hereby dismissed as withdrawn.

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 \$2,072.26.

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: May 28, 2015

Residential Tenancy Branch

