



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, 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 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. 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.

The landlord was represented at the hearing by an agent who gave affirmed testimony and called one witness who gave affirmed testimony. The tenant also attended and gave affirmed testimony. The parties were given the opportunity question each other and the witness with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant referred to evidence that was not received by me prior to the hearing but was received by the landlord's agent. With the consent of the landlord's agent, the tenant's testimony respecting that evidence is agreed to and forms a part of the evidence for this hearing.

No other issues with respect to service or delivery of evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid utilities and more specifically for unpaid Pay Per View?
- 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 replacement of a key fob?
- 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 return of all or part or double the amount of the security deposit?

Background and Evidence

Testimony of the witness was called first, in order to avoid inconveniencing the witness.

The witness testified that he was the manager of a UPS business in the City, however the business was sold in March, 2015 and the witness no longer has access to records. The process followed when registered mail was received for delivery, was to scan the bar code, take the letter or parcel and file it by mailbox, then tag the mailbox and wait for a recipient to claim it. Recipients would be notified by telephone, email or with a tag placed in the mailbox that registered mail was awaiting pick-up. Also, Canada Post brings mail to the UPS facility in bulk, which is signed for in one signature for 30 or 40 pieces.

UPS made an error with respect to an envelope, which resulted in no notification being sent to the recipient, however the witness does not recall the name of the recipient or the date. The recipient attended and asked about the envelope and the witness discovered that it had been mis-sorted, and no notification was provided to the intended recipient. The envelope was found underneath others, and wasn't tagged or scanned. The witness does not recall the date but believes it was at least 3 weeks to a month after it was received by UPS.

The witness also testified that the person who sent it, being the tenant or lawyer called about the registered mail asking whether or not the recipient had received the letter, but the witness wasn't able to disclose any information.

The landlord's agent testified that this fixed-term tenancy began on May 2, 2014 and ended on October 1, 2014 at which time the tenant was required to vacate the rental unit and the tenancy ended at that time. Rent in the amount of \$5,500.00 per month was payable 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 tenant in the amount of \$2,750.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that a move-in condition inspection report was completed by the parties on May 1, 2014 and a move-out condition inspection report was completed on September 29, 2014. A copy of the report has been provided, which shows the move-in and move-out portions and signatures of the parties, as well as photographs which the landlord testified were taken on September 29, 2014 in the presence of the tenant. The tenant refused to sign the report at move-out and refused to give a forwarding address in writing to the landlord's agent. The tenant returned on October 14, 2014 and provided a forwarding address on the report and signed it.

The rental unit is a high-end luxury unit which was rented furnished and included hotel-style cleaning services twice per month. The tenancy agreement, a copy of which has also been provided, states that at the end of the tenancy, a deeper cleaning is done:

"The Landlord agrees:

- (a) to repay the deposits and interest to the tenant, within 15 days of the end of the tenancy agreement, less the Landlord's cost for a professional, intensified cleaning (including carpets and/or area rugs, sofas, fabrics, draperies and blinds if required) at the Landlord's discretion.
- (b) to repay the remainder of the deposits and interest to the tenant within 15 days of the end of the tenancy agreement, unless the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or the landlord applies for dispute resolution under the Act within 15 days of the end of the tenancy agreement to claim some or all of the deposits. The 15-day period starts on the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing."

The landlord claims \$250.00 for intensified cleaning pursuant to that clause and has provided a copy of a receipt in that amount dated October 16, 2014 for "Final Cleaning Services."

The hardwood floors in the rental unit were brand new at the commencement of the tenancy, and the tenant left scratches in the main entry and dents in the entry, kitchen and living room. Repairs have not yet been completed, however the landlord has provided a written estimate which totals \$1,239.78, which the landlord claims as against the tenant. The landlord's agent testified that the inspection reports confirm that the scratches didn't exist at the beginning of the tenancy but do now. The damage is beyond normal wear and tear and the tenant was given several opportunities to repair the damage.

The landlord also claims \$25.00 for the tenant's failure to return a key fob and \$23.00 for Pay Per View, both of which the tenant agreed to in writing on the move-out condition inspection report.

The landlord's agent further testified that the tenant got ahold of the landlord saying that if the security deposit wasn't received within 15 days, the landlord would be required to pay double, and that a registered mail letter had been sent to the landlord. The landlord enquired about it, and found that it was received at the UPS store on October 26, 2014. The letter was from a lawyer on behalf of the tenant with a forwarding address and requesting return of the security deposit. However, the first that the landlord received a forwarding address from the tenant was on October 14, 2014 when the tenant signed the move-out condition inspection report.

The landlord's claim totals less than the amount of the security deposit, and the landlord's agent believed that none of the money held in trust should be released to the tenant pending the outcome of this hearing and the applications by both parties.

The landlord claims \$250.00 for intensified cleaning, \$1,239.78 for the damaged floors, \$25.00 for the key fob, \$23.00 for Pay Per View, and recovery of the \$50.00 filing fee, for a total claim of \$1,587.78, and an order permitting the landlord to keep that much of the security deposit. The landlord's application differs, showing that the cost for damaged floors was estimated at \$1,500.00, however the written estimate was received after the landlord's application was filed.

The tenant testified that he never resided in the rental unit but rented it for his sister who was expecting a baby. A unit that was furnished and included cleaning services was attractive, and the landlord was aware that the tenant would not be residing there although he signed the tenancy agreement and was responsible.

The tenant agrees that the move-in condition inspection report was completed at the beginning of the tenancy, and testified that he was present and took photographs during the move-out condition inspection. The tenant didn't agree with the report respecting the scratches in the floor so he didn't sign the report. When the move-in inspection was completed, there was a large wooden block in the entry as well as a mat on the floor, neither of which are in the landlord's photographs. The tenant didn't know at the beginning of the tenancy what was or not there as far as damage to the floor is concerned and the mat and block have always been there and were never moved. The tenant's sister had no reason to move either during the tenancy because cleaning services were provided. They would only have been moved by the landlord's cleaner. The cleaner also broke 2 vases during the tenancy.

On October 1, 2014 the tenant sent a text message to the landlord's agent asking what address the tenant should send a forwarding address to, and received the UPS address. The tenant asked a lawyer to send out the request for the security deposit which was done by registered mail on October 2, 2014. The tenant conducted a search

which showed that UPS received it on October 3, 2014. A copy of the envelope has been provided by the landlord showing registered mail addressed to the landlord at the address that the landlord's agent provided, and is the same address of the landlord on the move-out condition inspection report.

The tenant agrees to pay \$25.00 for the key fob and \$23.00 for Pay Per View, and agreed to that in writing on the move-out condition inspection report. However, the tenant does not agree with the landlord's claim for intensive cleaning. The landlord's cleaners were there twice per month.

The tenant seeks an order dismissing the landlord's application for monetary compensation for damaged flooring and intensive cleaning, and seeks an order for double the amount of the security deposit, less the \$25.00 for the key fob and \$23.00 for Pay Per View.

Analysis

Firstly, with respect to the security deposit, the *Residential Tenancy Act* requires a landlord to return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address, or must be ordered to repay the tenant double the amount. Although the testimony of the landlord's witness was very vague and cannot be considered as evidence of the tenant's request for return of the security deposit, I am satisfied that the landlord didn't receive the registered letter. The tenant has no evidence to suggest otherwise. However, the parties agree that the landlord received the tenant's forwarding address in writing on October 14, 2014 and the landlord made an application for dispute resolution claiming against a portion of the security deposit on October 29, 2014, but did not return the balance to the tenant, stating that the landlord's agent didn't think it should be dealt with until after these disputes were heard. The landlord made a claim against a portion of the deposit but not the entire deposit, and therefore, I find that the landlord did not deal with the unclaimed portion within the required 15 days, and the landlord must be ordered to repay the tenant double the amount of the unclaimed portion. The amount claimed in the landlord's application is \$1,798.00 and the difference is \$952.00.

With respect to the landlord's claim for intensified cleaning, I have reviewed the tenancy agreement, and note that it states that the tenant will be responsible for such cleaning, "... at the Landlord's discretion..." The *Residential Tenancy Act* states that a tenant is responsible for reasonable cleanliness at the end of a tenancy, not for leaving it in a pristine condition that a landlord may want for future tenancies; that is a landlord's responsibility. I accept that this is a high-end rental unit, as reflected in the amount of

rent payable, however where a term in a tenancy agreement is unfair to one party, the term can be considered unconscionable. Because the tenancy agreement gives the landlord total discretion, and the term is contrary to the *Act*, and cleaning services throughout the tenancy were provided by the landlord, I find that the term is unconscionable, and I dismiss the landlord's application for intensified cleaning.

With respect to the landlord's claim for damaged floors, I accept the written estimate as a reasonable amount. I also accept the testimony of the landlord's agent that the tenant was offered an opportunity to repair the damage. The tenant disagrees that the damage was caused during the tenancy, but the tenant didn't reside in the rental unit. Because the *Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning of the tenancy and the end of the tenancy, both parties had the responsibility of ensuring that it was accurate at the beginning of the tenancy, or that specific notes were made. I find that the landlord has established a claim in the amount of \$1,239.78 for the damaged floors.

The tenant has agreed in writing and during testimony to paying the landlord \$25.00 for the key fob and \$23.00 for Pay Per View, and I so order.

In summary, I find that the parties are entitled to recovery of monetary orders as follows:

DESCRIPTION	AMOUNT TO TENANT	AMOUNT TO LANDLORD	DUE TO TENANT
Security Deposit	\$2,750.00		\$2,750.00
Doubled Portion	\$952.00		\$3,702.00
Key Fob		\$(25.00)	\$3,677.00
Pay Per View		\$(23.00)	\$3,654.00
Intensified Cleaning		\$(0.00)	\$3,654.00
Damaged Floors		\$(1,239.78)	\$2,414.22
TOTALS	\$3,702.00	\$(1,287.78)	\$2,414.22

I hereby set off the amounts and grant a monetary order in favour of the tenant in the amount of \$2,414.22.

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

Conclusion

For the reasons set out above, 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 \$2,414.22.

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: June 24, 2015

Residential Tenancy Branch

