



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit and pet damage deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenant's security and pet damage deposits?

Background and Evidence

The rental unit is a townhouse in Abbotsford. The tenancy began on June 3, 2015 for a one year fixed term. The monthly rent was \$1,650.00 and the tenant paid a security deposit of \$825.00 and a pet damage deposit of \$825.00 by post-dated cheque delivered at the start of the tenancy.

The landlord testified that the tenant paid June rent in cash on June 8th. She provided a receipt for the payment. The tenant requested that the landlord delay cashing cheques in payment of the security deposit and pet deposit. She deposited those payments made by post-dated cheque on June 15, 2015.

The landlord testified that she received comments from neighbours about noise and disturbance at the rental unit and she gave the tenant notice that she intended to make an inspection of the unit. She inspected the unit on July 2nd. The landlord said the carpets were soiled by the tenant's dog and there was cigarette ash and significant wear and tear.

Although neither party provided a copy, the tenant said the landlord gave him a handwritten notice telling him that he was being evicted and should move out immediately; it was not a proper form of Notice to End Tenancy. The landlord testified that she did not receive a July rent payment. She posted a 10 day Notice to End Tenancy for unpaid rent to the door of the rental unit on July 9, 2015.

The tenant moved out of the rental unit on July 12, 2015. He notified the landlord that the carpets had been professionally cleaned. On January 18, 2015 the landlord sent a note to the tenant to say that she had taken possession of the rental unit as of July 13th and changed the locks.

In her application for dispute resolution the landlord claimed the following amounts:

• Carpet cleaning to remove dog urine and odour:	\$630.00
• Unpaid rent, July 1 – July 12 th :	\$825.00
• Fee for legal advice regarding tenancy:	\$224.00
• Window screen repair:	\$16.80
• Wood filler for window sill repair:	\$5.67
• Odour eliminator to help remove pet odour:	\$12.00
 Total:	 \$1,713.47

The landlord testified that the tenant had the carpets cleaned before he moved out, but the cleaning failed to remove the stains and odour from dog urine. The landlord had the carpets re-cleaned. She submitted an invoice for the cleaning in the amount of \$630.00. According to the invoice a specialty clean was required to remove the stains and odour. The landlord claimed for the cost of odour eliminators purchased to deal with the urine smell.

The landlord testified that the tenant broke a window screen when he entered the rental unit through a window after he was locked out of the rental unit. She claimed for the cost of repairing the screen and for material to fix a damaged window sill.

The tenant disputed the landlord's claims. He said he was evicted by the landlord's notice ordering him to vacate the rental unit and therefore should not be responsible for July rent. The tenant said that the landlord visited the rental unit to make an inspection without notice when he was away. He said that he left his keys inside the rental unit and his girlfriend left the door unlocked so he could re-enter, but the landlord locked the doors after her inspection, leaving him no option but to enter the unit through the window. He said the screen was damaged as a result. The tenant denied that he failed to pay rent for July. He said that he left a cheque for July rent in the rental unit and told

the landlord to pick it up when she was in the unit during her inspection, but she refused to take the cheque.

The landlord denied that the tenant left a rent cheque for her to pick up and she denied that he called her to tell her there was a cheque for July rent. The landlord said that when she attended to inspect the rental unit she locked the door when she left. She was not aware that the tenant left his keys behind, or that he told his girlfriend to leave the unit unlocked.

Analysis

After the landlord received complaints and expressions of concern about the rental unit from neighbours, she inspected the unit. Based on what she felt was excessive damage to the unit, she gave the landlord a notice telling him to move out. The notice was not in the form required by the *Residential Tenancy Act* and it was therefore not an effective form of Notice. The tenant gave conflicting evidence about the payment of July rent. He said that he did not pay July rent and should not be responsible for it because the landlord terminated the tenancy. He also said that he left a cheque for the landlord, but she refused to accept it.

The tenant did occupy the rental unit until July 12th and paid no rent for July. The landlord did not receive any rent payment for July. The tenant did not dispute the Notice to End Tenancy and moved out pursuant to the Notice. The landlord lost rental income for the month of July, but she has not claimed rent for the whole of the month and I find that she is entitled to an award for half of the July rent as claimed.

The landlord has claimed an amount paid for legal advice. This is not a recoverable expense upon an application for dispute resolution and this claim is denied.

I accept the landlord's testimony that although the carpets were cleaned by the tenant, there were urine stains and odour that required extensive additional treatments to remove. I allow the landlord's claim in the amount of \$630.00 as stated on the invoice provided. I also allow the claim for odour eliminating products in the amount of \$12.00.

The tenant claimed that the damaged window was the fault of the landlord, who locked him out of the rental unit. I do not accept this submission. The tenant instructed his girlfriend to leave the rental unit unlocked. The landlord was unaware of the circumstances when she locked the rental unit upon leaving. The tenant showed a reckless disregard for the safety and security of the rental unit by choosing to leave it unlocked. I find that the tenant's failure to take his keys and secure the rental unit was the effective cause for the window screen damage and I allow the landlord's claim in the amount of \$16.80 and the \$5.67 claim for repair materials.

Conclusion

I have allowed the landlord's claims in the amount of \$1,489.47. She is entitled to recover the \$50.00 filing fee for her application, for a total award of \$1,539.47. I order that she retain the said sum from the security deposit and pet damage deposits that she holds. This leaves a balance of \$110.53 remaining from the deposits. Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I have awarded the landlord the sum of \$1,539.47 to be retained from the deposits. I grant the tenant a monetary order for the balance of the deposits in the amount of \$110.53. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: January 22, 2016

Residential Tenancy Branch

