



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Castera Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord 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.

Two agents for the landlord company attended the hearing, one of whom gave affirmed testimony. The tenant also attended the hearing accompanied by his spouse, however only the tenant gave affirmed testimony. The parties were given the opportunity question each other respecting the testimony and evidence 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 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 the replacement of keys?
- 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's agent testified that this fixed term tenancy began in July, 2014. The parties entered into a new fixed term tenancy agreement for a tenancy to begin on September 1, 2015 and to expire on August 31, 2016, thereafter reverting to a month-to-month tenancy. A copy of the latter tenancy agreement has been provided. Rent in the amount of \$847.00 per month was payable on the 1st day of each month. The tenant paid a security deposit to the landlord in July, 2014 in the amount of \$410.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 63 units.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause which contained an effective date of vacancy of February 29, 2016. The tenant disputed it but failed to show up for the hearing, and the tenant's application was dismissed. The tenant paid rent for February, 2016, but stopped payment of the cheque on February 11, 2016, and a copy of the returned payment advice from the financial institution has been provided. The landlord claims \$847.00 for February's rent.

The tenant moved out on or about February 16, 2016 and left keys that give access to the rental unit in the mailbox. The landlord's agent posted a notice to enter on February 13, 2016 to see if the tenant had moved out, and entered the rental unit the following day. The tenant had mostly cleared everything out, leaving a few items on the balcony and a microwave oven in the kitchen.

A move-in condition inspection report was completed by the parties at the commencement of the tenancy, and the landlord's agent conducted a move-out condition inspection report on February 16, 2016, copies of which have been provided. Photographs provided for this hearing were also taken at that time. The photographs are faxed black and white copies and not very clear, however are captioned in hand-writing underneath each.

The tenant was given 6 keys at the commencement of the tenancy but only left 3 in the mailbox, and the landlord claims \$25.00. Also, the landlord claims \$70.00 for carpet cleaning, \$25.00 to clean the stove, and \$3.00 to clean drapes, although no receipts have been provided. The landlord's agent testified that the inside of the stove wasn't bad, but under burners and the base of the top of the stove, were left with charred food remains, and some pans had to be replaced due to charring. The stove was new at the beginning of the tenancy.

The landlord claims \$847.00 for unpaid rent; \$70.00 for carpet cleaning; \$3.00 for window covering cleaning; \$25.00 for cleaning the stove; \$25.00 for key replacement; and recovery of the \$100.00 filing fee.

The tenant testified that he had complained 3 times to the landlord's agents about constant fan noise in the unit next to the rental unit, next to the tenant's bedroom, due to a grow-op. It got to

the point where the tenant had to sleep in the living room, and the landlord's agents didn't seem to care. Since complaining, the landlord's agents have been trying to get rid of the tenant, and the tenant feels it is a total injustice.

The tenant was served with 2 notices to end the tenancy by the landlord, and the tenant had to move. The tenant needed the rent money to put a deposit on a new place, so he had to stop payment on the rent cheque for February.

The tenant further testified that he returned all keys that he had to the landlord by leaving them in the mailbox.

The tenants cleaned the rental unit before departing, and don't smoke. The tenant denies that the rental unit was not left reasonably clean.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. The tenant does not deny that he put a stop-payment on the rent cheque for February, 2016, and therefore I find that the landlord has established a claim in the amount of \$847.00.

Where a party makes a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

A tenant is required to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. In this case, the tenant denies that cleaning was required, and testified that the tenants cleaned the rental unit before they departed. I have reviewed the move-in/out condition inspection reports and there is no mention of the carpets or drapes needing cleaning at the end of the tenancy. Although the landlord's photographs are not clear, I accept that the photograph of the bathtub has a notation that states that the bathtub was not clean, which is consistent with the inspection report. The same applies to the stove, in that a notation exists on the move-out condition inspection report as well as on the photograph. Other than those 2 items, the rental unit was reasonably clean. A tenant is not required to leave a rental unit in a pristine condition that a landlord may want for future tenancies, that is the responsibility of the landlord. In the circumstances, I find that the tenant left the rental unit reasonably clean and undamaged, and the landlord's claim for damages is dismissed.

Further, the landlord has provided no evidence of the cost of replacing keys. The tenant testified that he returned all the keys he had. I find that the landlord has failed to establish element 3 in the test for damages.

Since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$410.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$537.00.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, specifically key replacement, is hereby dismissed.

I hereby order the landlord to keep the \$410.00 security deposit in partial satisfaction of the landlord's claim for unpaid rent, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$537.00.

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: April 28, 2016

Residential Tenancy Branch