



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking 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; and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants attended the call. The landlord testified that he attended the home of the tenants and spoke personally to one of the tenants and the other tenant was visible but refused to go to the door. The landlord handed both hearing packages, containing the Landlord's Application for Dispute Resolution, notice of this hearing and all evidentiary material to the tenant who answered the door on September 6, 2016.

A party does not have to directly accept the documents in order to be deemed served, and if refuses to accept documents is deemed to be served even if dropped at the feet of the intended recipient. I accept the testimony of the landlord, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*. All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2012 and the tenants moved out on September 4, 2014. Rent in the amount of \$800.00 was payable on the 1st day of each month. On October 11, 2012 the landlord collected a security deposit from the tenants in the amount of \$400.00 and the tenants were required to pay a \$200.00 pet damage deposit. The rental unit is a basement suite, and the upper suite is also tenanted. A copy of the tenancy agreement has been provided.

A move-in condition inspection report was completed at the beginning of the tenancy, a copy of which has also been provided, and it shows that the tenants agreed with the report. The tenants gave notice to the landlord to end the tenancy effective August 31, 2016 but didn't vacate until September 4, 2016. A move-out condition inspection report was completed by the parties at the end of the tenancy, and a copy has been provided.

The tenants were in arrears of rent and utilities, and the tenants provided the landlord with a list of amounts owed to the landlord and to the tenants. A copy has been provided for this hearing and it shows that the landlord signed the document acknowledging receipt of \$1,097.29 on September 13, 2014 for the following:

- \$335.55 for hydro;
- \$46.12 for Fortis gas;
- \$415.52 for the water bill;
- \$700.00 for rent owed;
- \$200.00 for the unpaid pet deposit;
- LESS \$400.00 security deposit, totalling \$1,097.29.

The landlord also testified that the tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy and has provided a Monetary Order Worksheet setting out the following claims:

- \$304.50 for carpet cleaning;
- \$612.36 for new bedroom carpet;
- \$540.00 for cleaning the suite;
- \$640.71 to install a new front door;
- \$184.02 to patch and paint every room;
- \$108.59 for "missing 4 tube cloud cover;"
- \$29.16 for missing strainers, aerator, filters;
- \$17.28 for destroyed garbage can; and
- \$806.02 for "2 of 3 times sewer plugged."

The worksheet shows a total claim of \$3,242.63. The landlord testified that the carpets were left filthy, and a professional cleaner cleaned them twice and stains remained. The bedroom carpet was soaking wet with cat urine, and bottles of odor spray were left behind. The tenant said during the move-out condition inspection that they locked the cats in that room sometimes. The carpet was about 6 years old at the beginning of the tenancy and replacement cost was about

\$2,000.00, but the landlord needed it replaced right away for new tenants so replaced the carpet with a cheaper brand, and testified that depreciation has already been realized.

During the tenancy, the tenant slammed the front door several times so hard that all glass fell out and it wouldn't close properly. The other tenant tried to fix it, however it was just hanging by one pin and a few screws at the end of the tenancy. The door was dented, marked up, twisted and wouldn't fit anymore, so the landlord replaced it with the same type of door, and was successful in finding a sale price. The cost for the door was \$313.21 and the landlord paid an additional \$327.50 for installation.

The landlord also did some painting and touch-ups and testified that the rental unit was last painted in October, 2012. The tenants had taped pictures on the walls with packing tape which left marks that had to be patched. The landlord did the work himself and is not claiming his time, but the cost of the paint.

The kitchen lights were covered with a plastic "cloud cover" which the tenants took down twice during the tenancy and claimed it fell down the first time. The landlord replaced it during the tenancy, but it was missing at the end of the tenancy.

The rental unit had a plugged sewer system 3 times during the tenancy and the landlord called a plumber on each occasion. The landlord had the strainers and aerators replaced, which were missing again at the end of the tenancy in the kitchen, bathroom sink and tub. Also, the landlord had told the tenants to ensure pockets were empty when doing laundry and the plumber found coins, pen caps, tooth paste caps and other debris. The strainers in the sinks were removed after the landlord replaced them, and everything dropped in the sinks went down the drain.

The landlord had also left 3 furnace filters in the rental unit for replacement when necessary, and they are all gone. The landlord claims replacement of them.

During the tenancy the tenant ran over the garbage can with his vehicle, and never replaced it. The landlord had to provide one for new tenants.

The landlord has also provided copies of receipts for all items claimed in the Monetary Order Worksheet.

Analysis

Firstly, a tenant is not permitted by law to deduct a security deposit or pet damage deposit from rent and utilities owed to a landlord. In fact, a tenant is required to provide to the landlord a forwarding address in writing within a year of the end of the tenancy, and the landlord must deal with the security deposit and any pet damage deposit 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 tenant doesn't provide a forwarding address within a year of the end of the tenancy, the landlord may keep the security deposit.

In this case, the landlord accepted the payment of \$1,097.29, which I find has dealt with the security deposit considering that the landlord signed the document as it was presented and acknowledged receiving the money, and the tenants have been refunded the entire amount. However, the tenants paid the landlord a pet damage deposit, which is not the landlord's money, it is a deposit held in trust by a landlord for damages that may be caused by a pet.

In order to be successful in 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 such damage or loss.

The landlord has provided receipts for all of the items claimed, and therefore, I am satisfied that the landlord has established element 3.

I have also reviewed the move-in and move-out condition inspection reports showing that the tenants agreed to the report and condition of the rental unit at the beginning of the tenancy but did not agree at the end of the tenancy. However, the tenants did not attend the hearing to dispute any of the landlord's claims, nor did the tenants write any reason on the move-out condition inspection report of what they disagreed with.

The *Act* specifies that the reports are evidence of the condition of the rental unit, and I note that there is no notation of cleaning required at the end of the tenancy, other than carpet cleaning, and no mention of a broken door. Further, a landlord is expected to replace furnace filters, and I am not satisfied that the landlord has established that the tenants didn't use the 3 that the landlord left in the rental unit during the tenancy. I find that the landlord has established all other claims, being:

- \$304.50 for carpet cleaning;
- \$612.36 for new bedroom carpet;
- \$184.02 for paint;
- \$108.59 for the kitchen light cover;
- \$25.16 for missing strainers, aerator;;
- \$17.28 for destroyed garbage can; and
- considering the debris in the drains and missing strainers, \$806.02 for plumbing costs; for a total of \$2,057.93.

With respect to the \$200.00 pet damage deposit, the landlord has applied to keep it, and therefore, I order that the landlord be permitted to keep it in partial satisfaction of the claim. I grant a monetary order in favour of the landlord for the difference in the amount of \$1,857.93.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$200.00 pet damage deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,857.93.

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: November 16, 2016

Residential Tenancy Branch