



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF
 MNSD, OLC, 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 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; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties agree that the applications for dispute resolution and evidentiary material have been exchanged. The parties were given the opportunity to question each other, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to return of the security deposit?
- 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?

- 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 tenant testified that this month-to-month tenancy began on April 1, 2014 and the tenant and family vacated the rental unit on July 25, 2016. Rent in the amount of \$865.00 was payable on the 1st day of each month, and there are no rental arrears; the tenant paid rent to the end of July, 2016. A copy of the tenancy agreement has been provided by the landlord.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level of the home.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy which the tenant signed as agreeing that the report fairly represented the condition of the rental unit. The landlord did not provide the tenant with any opportunities to participate in a move-out condition inspection report and completed it herself in the absence of the tenant. The tenant has not provided the landlord with a forwarding address in writing but the landlord had the tenant's phone number and his spouse's phone number so could have called to arrange the move-out condition inspection. However, the landlord received the tenant's forwarding address in writing when the tenant served the Tenant's Application for Dispute Resolution on or about August 19, 2016. The landlord has not returned any portion of the security deposit.

The tenant denies damages claimed by the landlord. The tenants had arrived at the rental unit on July 25, 2016 during the tenancy and had noticed that the landlord had been inside the rental unit while the tenants were not at home. The landlord had done that before, and being in breach of the tenancy agreement, the tenants decided to move out that day and have not been to the rental unit since. The landlord's claim is silly, and the tenant denies that the photographs provided by the landlord are accurate. One photograph shows a fender, and another shows a bench, both of which the tenant has in his possession. Another photograph shows a picture in a frame which the tenant put in the garbage can prior to departing. The photographs depict that the tenant left a mess but denies that. However, while the tenants were cleaning and carpet cleaning the landlord told the tenants to leave and that the landlord would finish cleaning. The tenants complied and packed up and left. The tenants hadn't cleaned the fridge or oven and left only a deepfreeze and 3 bags of garbage and cigarette butts, not 400 pounds as claimed by the landlord.

The tenant further testified that the broken closet door claimed by the landlord was broken at move-in and the move-in condition inspection report reflects that. Further, the landlord is claiming concrete to fill a spot in the floor where a drain had previously been and the tenant is not responsible for that. The landlord is also claiming removing carpets in the living room, which the tenant disputes. The landlord called her big son-in-law to watch over the tenants in a threatening manner, so instead of returning, the tenants just got out of there.

The landlord testified that on July 23, 2016 the landlord had been away for couple of days, and upon arriving home at 9:00 p.m. noticed that a lot of things in the back yard belonging to the tenant's family were gone and a foam mattress, deep freeze, truck fender, broken picture frame and cigarette butts were left. In the morning, the landlord's neighbor said that the tenants had moved beds and furniture out. Believing the tenant had abandoned the rental unit the landlord checked the *Residential Tenancy Act* and went into the rental unit with the neighbour. Some of the tenant's belongings were still there, such as clothing, food in fridge and other sundry items and the landlord thought the tenants might return. The landlord found a note on counter which said, "Don't touch our stuff." The landlord and the neighbour left right away.

On the evening of July 24 the tenant knocked on the landlord's back door and accused the landlord of entering the rental unit illegally, speaking over the landlord and wouldn't allow the landlord to talk. The tenant said he wanted the security deposit back and the landlord replied that the inspection had to take place first. The tenant said he wouldn't clean unless he got the security deposit back. The parties agreed that the landlord would do the cleaning and keep the security deposit and they shook hands. Nothing was agreed to in writing, however the tenant moved more belongings out and then served the landlord with the Tenant's Application for Dispute Resolution claiming the security deposit.

The landlord's photographs provided for this hearing were taken on July 25, 2016. The landlord has provided a monetary order worksheet claiming \$5,013.16 as follows:

- \$105.53 for changing locks because the tenant didn't return the keys;
- \$42.60 for paint, brushes and glue;
- \$47.04 for cleaning supplies, clamps, wall patching and sink strainers (plugs) which were missing;
- \$26.15 for paint brushes and extra keys;
- \$13.70 for concrete;
- \$33.57 for light bulbs and steel wool;
- \$1,381.26 to replace flooring that was too dirty and damaged to keep;

- \$998.71 for the cost of installing new flooring;
- \$15.00 for the cost of dumping garbage left by the tenant;
- \$29.60 for the cost of dumping more garbage left by the tenants;
- \$2,320.00 for paying 3 relatives and the landlord \$20.00 per hour for 104 hours and 2 relatives \$12.00 per hour for 20 hours, for labor, repairing and refurbishing the suite.

Receipts have also been provided. The landlord testified that the closet door had a missing screw at the beginning of the tenancy and the tenant said he'd fix it. The landlord does not recall if the tenant took the fender. The carpets were so badly stained that they had to be ripped up and replaced in the living room, as well as flooring in the kitchen. The landlord does not recall how old the carpets were but suggests about 4 years old. The floor wasn't level enough when applying new flooring so more concrete had to be purchased which the landlord would not have done if the landlord didn't have to replace the flooring at the end of the tenancy. Several relatives helped with labor and put in a lot of hours.

The rental unit was re-rented for September 1, 2016.

Analysis

The *Residential Tenancy Act* puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed by the parties at the beginning and end of the tenancy, and the regulations go into great detail of how that is to happen. If the landlord fails to comply, the landlord's right to make a claim against the security deposit for damages is extinguished. Also, the *Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy.

In this case, the landlord did not suggest any dates to complete the move-out condition inspection report, but testified that the parties shook hands and the landlord believed that was the end of it until served with the tenant's application. However, the landlord has not complied with the *Act* or the regulations by providing the tenant with at least 2 opportunities to complete the inspection, and therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The landlord's right to make a claim for damages is not extinguished. In order to be successful, the onus is on the landlord to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate any damage or loss suffered.

The tenant agrees that a deepfreeze and 3 bags of garbage were left behind, and the parties agree that the landlord was going to finish the cleaning at the landlord's suggestion. Therefore, I find that the landlord has not mitigated any losses for cleaning or cleaning supplies, but has established a claim of \$29.60 for landfill fees, considering the weight of the deepfreeze.

The tenant did not dispute that keys to the rental unit were not left for the landlord, nor does the tenant dispute sink strainers or light bulbs, and the landlord has provided receipts. I find that the landlord has established the claims for a deadbolt at \$27.98 and \$6.87 for keys, sink strainers at \$1.49 and \$6.29 for light bulbs + 5% GST, which totals \$44.76 and I find that the landlord has established that claim.

I am not satisfied that the tenant has breached the *Act* or the tenancy agreement causing the landlord to have to purchase concrete, and I dismiss that portion of the landlord's application.

With respect to flooring and painting, any such award cannot put the landlord in a better financial situation and ordering that the tenant pay for such would provide the landlord with new flooring and new paint when the landlord didn't have new flooring or paint at the beginning or end of the tenancy. I refer to Residential Tenancy Policy Guideline #40 which contains a chart for the general life-span of building elements, putting interior painting at 4 years and carpeting at 10 years. The landlord guessed that the carpeting was 4 years old, and there is no evidence before me of when the interior was last painted. The tenancy began on April 1, 2014, almost 3 years ago.

As a result of the landlord's failure to have the move-out condition inspection report completed in accordance with the regulations, the tenant has not had the opportunity to agree or disagree with the report. The tenant denies the damages, and I am not satisfied that the report completed in the absence of the tenant can be relied upon, or that the tenant has breached the *Act* or the tenancy agreement causing the landlord to incur such expenses. Therefore, the balance of the landlord's application cannot succeed.

I order the landlord to keep \$74.36 of the \$400.00 security deposit and return the balance of \$325.64 to the tenant, and I hereby grant a monetary order in favour of the tenant in that amount.

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

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 \$325.64.

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: February 15, 2017

Residential Tenancy Branch