



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords 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.

Both landlords and the tenant attended the hearing, and each gave affirmed testimony. The parties were also given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords 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 2 missing door stoppers?
- Should the landlords be permitted to keep part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord (LL) testified that this fixed term tenancy began on September 1, 2016 and was to expire on August 31, 2017 at which time the tenant was required to vacate the rental unit. However, the tenant moved out on December 31, 2016. The rental unit is a

townhouse, and the landlords do not reside on the property. A copy of the tenancy agreement has been provided for this hearing.

Rent in the amount of \$1,350.00 per month was payable on the 1st day of each month and there are no rental arrears. Prior to the commencement of the tenancy the landlords collected a security deposit from the tenant in the amount of \$675.00 as well as a pet damage deposit in the amount of \$675.00, both of which are still held in trust by the landlords.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and the tenant authorized an agent to complete the move-out inspection. He provided the landlords with a letter of authorization from the tenant as well as a letter from the tenant with a forwarding address and requesting that both deposits be returned to the tenant. The agent authorized by the tenant agreed in writing on the report to a deduction of \$180.00 from the deposits. A copy of the report has been provided for this hearing which shows a signature of the tenant's agent as well as a notation that the amount is an estimate, not an actual cost. The landlord testified that the actual damages amount to \$188.13, which the landlords claim against the tenant, as well as recovery of the \$100.00 filing fee.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$18.00 for cleaning by the landlord;
- \$29.24 for re-screening the balcony door;
- \$4.89 for 2 missing doorstoppers;
- \$10.00 for disposal of a rug damaged by a pet;
- \$126.00 for carpet cleaning; and
- \$100.00 for recovery of the filing fee.

The tenancy agreement specifies professional carpet cleaning by the tenant upon vacating, which was not done and the landlords had a company attend. A copy of the invoice has been provided.

The landlords re-rented the rental unit for a new tenancy to begin on January 1, 2017, but did not return the tenant's deposits because the new tenants may not be as reliable, and since the tenant signed a fixed-term tenancy that hadn't yet expired, the landlord believed that if rent wasn't paid, the landlords could claim the unpaid rent as against her. The landlords filed this application for dispute resolution on January 12, 2017 because the landlords received the tenant's letter requesting all of the deposits while the tenant's agent agreed to the landlords keeping \$180.00.

The second landlord (EL) testified that after the move-out condition inspection was completed, the tenant's agent gave the landlord's husband 2 letters. One requested the full deposits and the other authorizing the tenant's agent to complete the inspection. On the latter, there is no authorization for the tenant's agent to agree to any deductions from the deposits.

The new tenants moved in on January 1, 2017, and the landlord believes that due to the fixed term, if new tenants can't pay the rent, the previous tenant is responsible until the end of the fixed term.

The tenant testified that on December 31, 2017 she authorized her agent to complete the move-out condition inspection and give a forwarding address to the landlords. The tenant's agent signed the report agreeing to \$180.00 being retained by the landlords and told the tenant that the landlords would send the receipts and balance of the deposits. However, on January 16, 2017 the tenant left a message on the landlords' phone about the balance of the deposits, but received no calls back. The tenant left messages again on January 18 and 28. On January 31, 2017 the landlord called the tenant saying he had sent a hearing package and a cheque by registered mail but it had been returned. The tenant asked if she could pick up the cheque, but the landlord refused because the one he issued hadn't yet been returned to him; he hadn't had time to pick it up from the post office and was going on vacation for 2 weeks and would deal with it upon his return.

On February 1, 2017 the tenant gave a new forwarding address to the landlords and requested the deposits be returned. However, the landlords served the hearing package on February 17, 2017 without any of the deposits being returned, and that was the first time the tenant heard about any problems or that the deposits weren't being returned.

The tenant also testified that she had the carpets professionally cleaned, which the landlord saw. The cleaner invited the landlord in to look with an infra-red light and walk-through. The rug outside was used by other cats and was frozen to the deck.

Analysis

Because the tenant authorized an agent to complete the move-out condition inspection, and that agent authorized the landlords to keep \$180.00 of the security deposit, regardless of what the tenant's letter said requesting the return, the tenant's agent had authority to allow that deduction. The landlords needed only return the portion over that, or get the tenant's permission to keep another \$8.00.

In a fixed term tenancy, once a landlord has secured a new tenant, the tenancy ends. A landlord has 15 days from that date or the date the landlord receives the tenant's

forwarding address in writing to return the deposits or make an application for dispute resolution claiming against the deposits. The landlord may not hold onto the deposits in case new tenants don't pay their rent.

In this case, the landlords filed the application for dispute resolution on January 12, 2017 which is within the 15 day period, but did not return any portion of the deposits and claim a fraction.

I have reviewed the condition inspection reports which have been agreed to in writing by the parties. The *Act* specifies that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I accept that the landlords have established a claim of \$18.00 for cleaning, \$29.24 for re-screening the balcony door, and \$4.89 for missing doorstoppers. If other cats were spraying or urinating on the rug, the tenant ought to have put an end to that, and I find that the landlords have established the \$10.00 claim. With respect to carpet cleaning, although the tenant had it done at the beginning of November, the tenant had pets and agreed to professional carpet cleaning at the end of the tenancy. Therefore, I find that the landlords have established the \$126.00 claim. Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee, for a total of \$288.13.

I refer to Residential Tenancy Policy Guideline #17 - Security Deposit and Set-off, which states, in part:

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

I find that the landlords ought to have returned all but the \$180.00 agreed to by the tenant's agent, and I find it appropriate to order the landlords to return double the remaining amount, or \$2,340.00 ($\$675.00 + \$675.00 = \$1,350.00 - \$180.00 = \$1,170.00 \times 2 = \$2,340.00$), less the award of \$288.13, for a total of \$2,051.87.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,051.87.

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: July 18, 2017

Residential Tenancy Branch