



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNSD

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; 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 landlord and an agent for the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The tenant's agent provided evidentiary material to the landlord by email the day of the hearing and to the Residential Tenancy Branch the day before the hearing. The landlord submitted that she received it a half hour before the scheduled hearing and has not had an opportunity to review it. The Rules of Procedure require a respondent to provide evidence to the Residential Tenancy Branch and to the applicant at least 7 days before the hearing, and since the tenant's agent has not done so, I decline to consider that evidence.

At the commencement of the hearing, the tenant's agent submitted that she was a tenant named in the tenancy agreement but is not named in the landlord's application and has not been served with the landlord's application or evidence, and was provided with a copy of the notice of hearing from the tenant named in the landlord's application. No other documents were received, however the tenant's agent is not certain whether or not other documents were also received from the landlord by the tenant served.

The landlord submitted that the tenant named in the landlord's application provided a forwarding address to the landlord, and the landlord served the notice of hearing and evidence by registered mail to the tenant on September 21, 2017. A copy of a receipt stamped with that date by Canada Post has been provided as evidence for this hearing. The other tenant named in the tenancy agreement did not provide a forwarding address.

A person who makes a monetary claim against another person or persons is required to serve each respondent individually. I accept that the landlord had no address to serve the tenant's agent, and I also accept that the landlord served the application and evidence upon the tenant named in the landlord's application 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 tenant for damage to the unit, site or property?
- 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 testified that this fixed term tenancy began on September 1, 2016 and ended on August 31, 2017. Rent in the amount of \$2,400.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,200.00. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing, which names 2 tenants, the tenant named in the landlord's application and the tenant who attended this hearing as agent for the named tenant.

The landlord further testified that the tenants moved out of the rental unit on August 30, 2017, and the landlord received a forwarding address from the tenant named in this application on September 1, 2017 by email but not from the other tenant. The landlord was given instructions by the tenants to apportion the return of the security deposit and the landlord sent \$449.00 to each of the tenants by e-transfer on September 14, 2017. The tenant named in the landlord's application accepted the e-transfer, however the other tenant did not, and the landlord still has not received a forwarding address for that tenant. The landlord has not been served with an application for dispute resolution by either tenant claiming the security deposit.

Both tenants were present when the move-in condition inspection report was completed, and only 1 tenant attended for the move-out condition inspection. A copy has been provided as evidence for this hearing, and the move-out portion is dated August 30, 2018 and contains a signature of one of the tenants agreeing that the report

accurately reflects the condition of the rental unit at move-in and move-out. After the report at move-out was completed and the tenant departed, the landlord added some writings on the report, and testified that they were: damage to the toilet seat, burned out light bulbs, and a notation about returning \$898.00 of the security deposit to the tenants.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$125.00 for cleaning services;
- \$87.70 for carpet cleaner rental;
- \$20.00 for labour to clean the carpet;
- \$10.00 for light bulb replacement;
- \$47.93 for a new toilet seat;
- \$20.00 for labour to install the toilet seat; and
- \$20.00 for reimbursement of money paid to the tenants to paint.

The landlord also testified that the tenant named in the landlord's application has sent an email to the landlord stating that she approved of the amount of the security deposit return and would not be attending the hearing today. The e-transfer sent to the other tenant expired and has been transferred back to the landlord's account, however the tenant was unresponsive to emails, and since then the landlord has incurred costs for registered mail and a \$100.00 filing fee for the cost of this application.

The tenant's agent testified that the parties had agreed to meet at 7:00 p.m. on August 30, 2017 to complete the move-out condition inspection but the landlord kept pushing the time back and ended up starting after 9:00 p.m., contrary to the *Act* or the regulations. There was no way for the tenants to validate things the landlord added to the move-out portion. The parties made an agreement that was inclusive of all items, being \$75.00 for cleaning at \$25.00 per hour for 3 hours maximum, and the report specifies that. The tenant's agent would have asked for a quote if anything was claimed over that.

The tenant's agent also disputes being unresponsive to the landlord, and instructed the landlord to send her share of the security deposit by e-transfer. The tenant was out of the country when it was transferred and by the time the tenant returned, the e-transfer was timed-out and cancelled.

The tenant agrees that \$75.00 for cleaning should be deducted from the \$1,200.00 security deposit, as well as the cost for carpet cleaning, given that the tenancy lasted a year.

Analysis

Firstly, because a co-tenancy existed, I refer to Residential Tenancy Policy Guideline #13 – Rights and Responsibilities of Co-Tenants, which states, in part:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

It also states:

A security deposit or a pet damage deposit¹ is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

I accept that the landlord has only named one tenant because the landlord has not received a forwarding address from the other tenant. The landlord testified that the tenant named in the application agreed by email to the deductions the landlord made from the security deposit, but has not provided a copy. The tenant who attended this hearing testified that the tenant named in the landlord's application agreed that she attend as agent. Further, notifications from either party regarding security deposits, forwarding addresses and any other notifications specified by the *Act* cannot be made in writing by email or text messaging. The landlord also added a portion about the return of the security deposit and deductions from it. Therefore, I cannot find that the tenant named in the application agreed to any deductions.

Where a party makes a monetary claim for damages as against another party, 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 *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The landlord has made some changes to the move-out

portion of the report, and the tenant did not oppose the balance of the report which was described in some detail during the hearing.

I have reviewed the condition inspection reports and other evidentiary material provided by the landlord, and although the tenant only agreed to \$75.00 for cleaning, I am satisfied that the tenants did not clean in accordance with the *Act*, and the landlord has established a claim of \$125.00.

Where a tenant resides in a rental unit for a year or more or has pets not kept in a cage, carpet cleaning is the tenant's responsibility at the end of a tenancy. Therefore, I find that the landlord has established \$87.70 for the rental and \$20.00 for paying someone to clean the carpets.

I am also satisfied that the landlord has established a claim of \$9.13 for light bulb replacement, considering the receipts and the move-out condition inspection report.

With respect to the toilet seat, that is a matter that was added to the move-out condition inspection report after the tenant had signed it and departed. Therefore, I am not satisfied that the damage was caused by the tenants and I dismiss the claims for purchasing and installing it.

With respect to the claim for painting, the landlord testified that the money was given to the tenants to paint, but the tenants never completed the painting. However, the landlord has provided a receipt for the cost of paint, but there is no evidence before me that the tenants took the paint, and I find that it is likely still in the possession of the landlord and the claim is dismissed.

The *Residential Tenancy Act* does not provide for the costs incurred to serve documents or prepare for a hearing, but does provide for recovery of the filing fee. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has withheld \$302.00 of the security deposit, and has also received back \$449.00, and therefore currently holds \$751.00 in trust. Having found that the landlord has established a claim of \$341.83 ($\$125.00 + \$87.70 + \$20.00 + \$9.13 + \$100.00 = \341.83), I order the landlord to keep that amount and return the balance of \$409.17 to the tenant, and I grant the tenant a monetary order in favour of the tenant in that amount.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$341.83 of the security deposit held in trust, and I grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the difference in the amount of \$409.17.

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 19, 2018

Residential Tenancy Branch