



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

This hearing was scheduled to convene at 1:30 p.m. on July 18, 2018 by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call.

The tenant testified that the landlord was served with the Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on April 28, 2018. The tenant was given the opportunity to provide proof of such service after the hearing had concluded. I have now received a tracking print-out from Canada Post confirming that testimony, and showing that the landlord received the registered mail on May 2, 2018, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for cleaning the rental unit at the beginning of the tenancy, making repairs and loss of exclusive possession?

Background and Evidence

The tenant testified that this fixed term tenancy began on September 11, 2012 and reverted to a month-to-month tenancy after the first year. The tenancy ended on March 31, 2018. Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month at the beginning of the tenancy and was raised from time-to-time, and to \$1,295.00 per month by the end of the tenancy, and there are no rental arrears. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that prior to moving into the rental unit, the landlord collected a security deposit from the tenant in the amount of \$600.00 with the first month's rent, and no pet damage deposit was collected.

No move-in condition report was completed by the parties, however a move-out condition report was completed by the parties on March 31, 2018 and a copy has been provided as evidence for this hearing. It is dated March 31, 2018 and contains a forwarding address of the tenant. The tenant testified that the landlord returned \$267.18 to the tenant on April 15, 2018 and returned the balance of \$332.82 on April 26, 2018, both by way of email transfer. The tenant claims double the amount of the security deposit because the landlord did not return all of it prior to the 15 day time limit.

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

- \$2,000.00 for an Itemized list:
 - -cleanup the unit (washing walls, doors, windows, kitchen, bathrooms) = \$400
 - -waxing floors and fix two broken air vents = \$200
 - -fix fireplace vault = \$100
 - -replace patio door blinds broken strings = \$100
 - -fix three toilet handles = \$300
 - -fix fridge condensation pipe which was causing leaking = \$100
 - -replace missing/burnt bulbs = \$100
 - -fix two folding doors rails = \$100
 - -fix interior wall scratches = \$100
 - -replace broken toilet paper support master bathroom = \$100
 - -fix laundry washer door switch = \$100
 - -replace patio door screen net and build three missing screens for windows = \$300
- \$1,275.00 for loss of exclusive possession;
- \$1,200.00 for double the amount of the security deposit; and
- \$100.00 for recovery of the filing fee.

The tenant also testified that the landlord knew the tenant's family were good tenants and the landlord made absolutely no repairs during the 4 year tenancy, and had the landlord

acted in good faith and returned the security deposit in full within the time required, the tenant would not have claimed the costs on the Itemized List or loss of exclusive possession. The tenant did not request the landlord make any of the repairs in the Itemized List.

With respect to loss of exclusive possession of the rental unit, the tenant testified that the landlord listed the rental home for sale in July, 2017 and a realtor put a lock and key on the door handle outside. The landlord and the real estate agent requested that the tenant's family leave the rental unit for an hour or so during showings. The rental home was listed for sale until December, 2017, but the tenant does not recall how many times the tenant's family was required to vacate for showings. The tenant testified it caused a lot of suffering waiting outside during showings, including on August 20, 2017 which was the birthday of the tenant's son.

Analysis

The *Residential Tenancy Act* requires a landlord to return a security deposit or pet damage deposit to a tenant in full or apply for dispute resolution to keep the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later. If the landlord does neither within that 15 day period, the landlord must repay the tenant double.

I accept the undisputed testimony of the tenant that the tenancy ended on March 31, 2018 and the tenant has provided a copy of a move-out condition inspection report with the tenant's forwarding address dated the same date. I also accept that the landlord returned the security deposit to the tenant in 2 payments but only paid a portion of the security deposit to the tenant within that 15 day period. Therefore, I find that the tenant is entitled to double the amount. Since the landlord has repaid the \$600.00, I grant the tenant a monetary order in the amount of \$600.00.

With respect to the tenant's claim for repairs and cleaning, the *Residential Tenancy Act* allows a tenant to make emergency repairs and claim those amounts back from the landlord, but only if certain events occur and the repairs qualify as emergency repairs. In this case, they are not emergency repairs. The *Act* also permits me to make orders with respect to damage or loss, however in order to be successful in such a claim, the onus is on the tenant to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlord'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 tenant made to mitigate any such damage or loss.

In this case, the tenant did not ask the landlord to make any repairs or complete any cleaning at the beginning of the tenancy, and I am not satisfied that the tenant mitigated any inconvenience caused by the landlord failing to provide the rental unit in a clean condition, nor did the landlord agree to pay those amounts to the tenant.

Similarly, with respect to loss of exclusive possession, the tenant did not provide any testimony or evidence that the tenant did not agree to continued showings when the rental home was for sale or how many times the tenant's family was inconvenienced.

Therefore, I decline to order that the tenant recover \$1,275.00 for loss of exclusive possession or the amounts contained in the tenant's Itemized List.

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

I grant a monetary order in favour of the tenant in the amount of \$700.00.

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 \$700.00.

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: July 23, 2018

Residential Tenancy Branch