



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

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 rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 the tenant attended the hearing and each gave affirmed testimony, and the landlord called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness. No issues with respect to exchanging evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit 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, and more specifically for loss of rental revenue?
- 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 tenancy began on September 1, 2015. The tenancy agreement was renewed, and the newest tenancy agreement has been provided as evidence for this hearing, which commences on September 1, 2017 and expired on

March 31, 2018. The tenancy reverted to a month-to-month tenancy thereafter, and the tenant gave notice to end the tenancy on May 29, 2018 effective June 30, 2018.

Rent in the amount of \$965.00 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 tenant in the amount of \$482.50 as well as \$100.00 for a utility deposit, both of which are still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 11 units, and the landlord does not reside there.

A move-in condition inspection report was completed on August 15, 2017 and a move-out condition inspection report was completed on July 4, 2018. Copies of both have been provided for this hearing. The move-in condition inspection report also contains a check-list for cleaning when the tenancy ends. The landlord testified that a move-in condition inspection report was originally completed in July, 2015 when the tenant moved in, but the form of the report changed, and a new form was re-signed on August 15, 2017 onto a newer form with the same notations.

After the tenant gave notice to end the tenancy, the landlord posted an advertisement on Kijiji and Craigslist, and the tenant was advised that the landlord would need to show the rental unit. The first showing was scheduled for June 7, 2018, but the landlord found that it was not suitable for showing; the rental unit was too dirty overall. The tenant was away for most of the month of June, and on June 8, 2018 the landlord texted the tenant requesting that he clean it up, and if the tenant was not able to do so, the landlord's caretaker agreed to assist. The tenant denied that and said he'd clean it at the end of the tenancy. The advertisements were removed after the tenant communicated to the landlord that he would not agree to access for showings. The rental unit was re-rented for August 1, 2018.

The landlord has provided a Monetary Order Worksheet for this hearing, setting out the following claims:

- \$124.95 for carpet cleaning;
- \$551.25 for suite cleaning; and damages; and
- \$965.00 for loss of rent.

The repairs include patching and painting a mantle, repairing bathroom door damage and refurbish the medicine cabinet. The landlord has also provided a copy of an invoice for carpet cleaning dated July 25, 2018 and an invoice for suite cleaning and damages dated July 15, 2018. The landlord testified that cleaners are booked months in advance, so the

cleaning could not be completed earlier. Numerous photographs have also been provided for this hearing which the landlord testified were taken prior to the tenancy in 2015 and on July 4, 2018 after the tenant had vacated.

The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit. The landlord received a forwarding address from the tenant dated June 25, 2018 but does not recall when it was received. A copy has not been provided for this hearing.

The landlord's witness is the landlord's spouse and testified that she was present for the move-out condition inspection on July 4, 2018, and photographs were taken at that time. Other photographs were taken after the tenant left.

The witness also testified that the tenant's forwarding address was provided to the landlord's caretaker, but is not sure when it was received.

The tenant testified that he tried a few times to schedule the move-out condition inspection before July, 2018, but the landlord was not available and it didn't take place until July 4, 2018. Therefore, it is not reasonable that the tenant pay for an additional month of rent.

The tenant further testified that a couple of friends helped the tenant clean the rental unit thoroughly and the tenant took photographs and video during the move-out condition inspection. Photographs and video have been provided as evidence for this hearing. Other photographs have also been provided which the tenant testified were taken at the beginning of the tenancy.

On June 29, 2018 the tenant returned the keys to the landlord's caretaker who checked the condition of the rental unit at that time and said it looked good, but that the landlord would do the move-out report. A witness statement of a friend has also been provided for this hearing, and the tenant testified that the witness was present when the keys were returned.

The tenant also testified that the landlord's photographs at move-in are misleading, and do not represent the condition of the rental unit. The tenant wasn't there and doesn't know when they were taken. All of the move-out photographs appear to be edited, including photographs of carpets with a low brightness and low contrast. The landlord's claims are unreasonable.

The tenant did not have the carpets cleaned at the end of the tenancy, but vacuumed at least 4 or 5 times.

Landlord's Submissions: The landlord alleges fraud by the tenant. Two of the photographs provided by the tenant for this hearing were actually the photographs the landlord had uploaded to the advertisements prior to the beginning of this tenancy. Another is a photograph of a different rental unit. Further, the move-out condition inspection report was completed at night, and the photographs of the tenant were obviously taken during the day.

Analysis

I have reviewed all of the photographs, video and other evidence provided by the parties. I accept the undisputed submissions of the landlord that the move-out condition inspection was completed by the parties at night, but the photographs that the tenant has provided and testified were taken during the move-out inspection were obviously taken during the day. The landlord alleges that they are from an on-line advertisement which was posted prior to the beginning of this tenancy. The landlord also alleges that one of the photographs isn't even a photograph of this particular rental unit. I have compared the tenant's photograph of the living room to the photograph of the living room in the landlord's advertisements, and it is very clear they are not the same living room; the heat registers are entirely different. I accept that the tenant has provided fraudulent evidence and I cannot be satisfied that any of it is reliable. Therefore, I discount the tenant's evidentiary material in its entirety.

The tenant testified that all of the landlord's move-out photographs appear to be edited, including photographs of carpets with a low brightness and low contrast. I agree that the move-out photographs were taken during the day, however I see absolutely no evidence of editing.

Where a party makes a claim against another party for damage or loss, the onus is on the claiming party to satisfy that the damage or loss exists; 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; the amount of such damage or loss; and what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant admitted that he hadn't cleaned the carpet, which is required when a tenant resides in a rental unit for a year or more, and I find that the landlord has established the claim of \$124.95 for carpet cleaning.

I have reviewed the move-in and move-out condition inspection reports and I accept the landlord's claims for cleaning the rental unit and repairs totalling \$551.25.

With respect to loss of rental revenue, the landlord was not available to complete the move-out condition inspection until July 4, 2018, but the tenancy ended on June 30, 2018. Therefore, I am not satisfied that the tenant ought to be responsible for the landlord's failure to re-rent for July 1, 2018. I am satisfied, however, that had the tenant left the rental unit reasonably clean and undamaged the landlord would likely have been able to re-rent for July 15, 2018. Therefore, I am satisfied that the landlord has mitigated a loss for half a month's rent and has lost half a month's rent due to the tenant's failure to comply with the *Act*, and I grant a monetary order in favour of the landlord in the amount of \$482.50.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit in trust in the amount of \$482.50 as well as a utility deposit of \$100.00. Having found that the landlord is owed \$1,258.70 ($\$124.95 + \$551.25 + \$482.50 + \$100.00 = \$1,258.70$), I order the landlord to keep both deposits in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference in the amount of \$676.20.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$482.50 security deposit and the \$100.00 utility deposit, and I grant a monetary order in favour of the landlord as against the tenant, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$676.20. 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 14, 2018

Residential Tenancy Branch