



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX CREST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL MNDL-S MNRL-S
FFT MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant which have been joined to be heard together. The landlord's application seeks a monetary order for unpaid rent or utilities; a monetary order for damage to the unit 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 tenant's application seeks a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord.

The tenant attended the hearing, as did an agent for the landlord who is a property manager for the owner of the rental unit. The landlord's agent also called one witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to question each other and the witness and to give submissions.

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

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be ordered to return all or part of the security deposit or pet damage deposit to the tenant?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 1, 2018 and was to expire on August 31, 2019 thereafter reverting to a month-to-month tenancy. The tenant vacated the rental unit on May 31, 2019. Rent in the amount of \$2,700.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,350.00 as well as a pet damage deposit in the amount of \$1,350.00, both of which are still held in trust by the landlord. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing, which includes a clause containing liquidated damages.

The tenant vacated the rental unit on May 31, 2019 having given the landlord notice to vacate on May 2, 2019 effective May 31, 2019. The notice was dropped off at the office of the landlord's property management service. The landlord advertised the rental unit on Craigslist on June 3, 2019, but the rental unit was not left in good condition, so the landlord was not able to re-rent until August 15, 2019. The landlord claims the sum of \$2,700.00 as one month's loss of rental revenue for the tenant providing less than one month's notice to vacate prior to the date rent is payable, but is not claiming any additional unpaid rent or liquidated damages.

A move-in condition inspection was completed by another agent of the landlord with the tenant present, and a move-out condition inspection was scheduled for June 7, 2019, which was 7 days after the tenant vacated. The parties both attended, and a copy of both inspections has been provided as evidence for this hearing. The landlord's agent testified that the rental unit had been painted in August, 2018, just prior to the beginning of this tenancy, and at the end of the tenancy required painting. The inspection report at move-out shows that 2 walls in the living room were patched with a different color than the paint, as well as some other areas. The cost was over \$500.00 for a full painting of the master bedroom and touching up other areas. A copy of the invoice has not been provided for this hearing because the invoice covers more than 1 job and cannot be separated. The landlord claims \$200.00.

Further, the tenant did not leave the rental unit reasonably clean and the landlord paid \$355.00 for a cleaner. A copy of the invoice has not been provided for this hearing, however the landlord's agent testified that it states that a full house cleaning was completed on July 7, 2019 for 17 hours and 15 minutes at \$20.00 per hour, plus \$10.00 for oven cleaner. The landlord claims \$350.00 from the tenant.

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

- \$2,700.00 for unpaid rent for June, 2019;
- \$550.00 for repairs and cleaning;
- \$100.00 for the filing fee,
- for a total of \$3,350.00.

The landlord received the tenant's forwarding address in writing on June 3, 2019 in a letter from the tenant dated May 31, 2019 which was dropped off at the landlord's (broker's) office, and the landlord filed the Application for Dispute Resolution on June 7, 2019.

The landlord's witness testified that he is employed for the manager as an assistant, and his duties include some inspections of properties both at move-in and move-out. The witness completed both inspections with this tenant. The witness took photographs of the rental unit on August 21, 2018 when the move-in portion was completed, and the tenant was present. At move-out the witness arrived at the rental unit earlier than the tenant and took photographs about an hour before the tenant arrived. All photographs have been provided as evidence for this hearing. A copy of the inspection reports at move-in and move-out was provided to the tenant but the witness cannot recall if the move-in photographs were provided to the tenant at the commencement of the tenancy.

The tenant testified that on April 23, 2019 he sent an email to the landlord's agent stating that the tenant would be vacating the rental unit on May 31, 2019. The tenant was out of town at the time. The landlord responded, and a string of emails has been provided for this hearing. The landlord each time was dismissive. The landlord made no attempt to re-rent during the month of May and only updated the advertisements twice. Also, a colleague of the tenant sent a copy of an email the colleague had sent to the landlord about renting and never received a response, and no acknowledgement of receipt of inquiries. The advertisement shows rent at \$2,700.00 per month which is about \$300.00 per month below market value, and with such high demand, it ought to have been rented. The landlord did not act with due diligence, and therefore did not mitigate.

With respect to the landlord's claim for repairs and cleaning, the tenant has also provided photographs at move-in and move out. The tenant testified that at move-in the photographs were taken during the move-in condition inspection on August 24, 2018 and the move-out photographs were taken on May 31, 2019 and some during the June 7 move-out condition inspection with the landlord's witness present.

The tenant disagrees that the rental unit had been painted a month or less prior to the beginning of the tenancy. Aside from the photographs, the move-in condition inspection

report shows that there were marks on walls, trim and ceilings, as well as stains but does not indicate new paint in any of the rooms.

The move-out condition inspection was completed a week after the tenant departed so he did not have access to the rental unit so could not rectify any issues raised by the landlord's agent. Some of those items, respecting lack of cleaning, include lint trap in the dryer which takes about 2 seconds to rectify and a loofa left in the bathtub that just needed to be picked up. The tenant left the rental unit in a higher standard at move-out than it was at move-in, and was told by the landlord's agent that the notice to end the tenancy given by the tenant was okay as long as the tenant left the rental unit in the same condition as at move-in.

The tenant also disagrees with the landlord's testimony about when the tenant's forwarding address was received. The tenant dropped off the letter at the landlord's office on May 31, 2019 and it was signed by the receptionist.

Analysis

Firstly, with respect to the landlord's application for monetary compensation for unpaid rent, even if the tenancy agreement was made on a month-to-month basis the tenant would be required to give notice to the landlord to vacate the day before rent is payable. In this case, rent is payable on the 1st day of each month, so regardless of the email from the tenant, the landlord is entitled to collect rent for the month of June, 2019 because the notice to vacate given by the tenant wasn't received by the landlord until June 2, 2019.

In order to be successful in a claim for damage or loss, 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.

Further, the *Act* specifies 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 parties have both provided photographs of the rental unit at the beginning and end of the tenancy which I can consider, however I must consider the inspection reports.

The move-in condition inspection report shows that at the beginning of the tenancy there were marks and stains on walls, stains in carpet and cracks in walls. Each is marked "Good" or "Fair." At the end of the tenancy floors and screens were not cleaned, oil stains remained inside the oven, the dishwasher and cabinets had not been cleaned, nor had the refrigerator. Each of those items are marked "Good" or "Fair."

Considering the markings at move-in, I do not accept that the rental unit was newly painted just prior to the beginning of the tenancy. The landlord has not provided an invoice for painting prior to or after the tenancy ended and testified that because there were other jobs in the invoice at the end of the tenancy it can't be separated. I am not satisfied that the landlord has satisfied elements 1, 2 or 3 in the test for damages or established any claim for painting.

With respect to the claim for cleaning the rental unit, I have also reviewed all of the photographs provided by both parties. I note that the tenant's photographs do not show that the rental unit was in pristine condition at the beginning of the tenancy, and I note that the tenant's photographs do not include the inside of the oven at the end of the tenancy. However, it is not a tenant's responsibility to leave a rental unit in a pristine condition that a landlord may want for a future tenant, but is required to leave it reasonably clean and undamaged except for normal wear and tear. The landlord has not provided any evidence of the cost associated with cleaning, and I'm not satisfied that the landlord has established that the amount claimed for cleaning is for cleaning required beyond normal wear and tear..

The landlord currently holds a security deposit in the amount of \$1,350.00 as well as a pet damage deposit in the amount of \$1,350.00, for a total of \$2,700.00. The *Residential Tenancy Act* specifies that a pet damage deposit may only be applied to damages caused by a pet, and that the landlord must return the security deposit or apply for dispute resolution to keep it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

The parties disagree when the landlord received the tenant's forwarding address in writing, but the landlord filed the Application for Dispute Resolution on June 7, 2019, and I find that the landlord made the claim within 15 days of receipt of the forwarding address as required by the law regardless of whether the tenant's forwarding address was received on May 31 or June 3, 2019.

The deposits belong to the tenant. Having found that the landlord is owed \$2,700.00 for rent for the month of June, 2019, I set off those amounts, and I find that each party bears their own costs with respect to the filing fee.

I dismiss the landlord's application for monetary compensation for damage to the rental unit or property, and I order the landlord to keep both deposits in full satisfaction of the landlord's claim with respect to unpaid rent.

Conclusion

For the reasons set out above, I hereby dismiss the landlord's application for monetary compensation for damage to the rental unit or property.

I hereby order the landlord to keep the \$1,350.00 security deposit and the \$1,350.00 pet damage deposit in full satisfaction of the landlord's claim regarding unpaid rent.

This order is final and binding.

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: September 24, 2019

Residential Tenancy Branch