



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cherry Creek Property Services
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on June 28, 2019 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on July 16, 2019 for an order for the return of the security deposit.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 1, 2019. No move-in inspection was conducted. The tenancy ended on January 31, 2019. Rent of \$520.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$250.00 as a security deposit. On February 22, 2019 the Landlord returned \$125.00 to the Tenant. The Tenant did not provide written authorization for the Landlord to retain any of the security deposit and at that time the Landlord had not made an application for dispute resolution to retain any portion of the security deposit. The Tenant provided its forwarding address on June 25, 2019.

The Landlord states that although an offer for a move-out inspection was made for January 31, 2019 the Tenants did not accept this offer. The Landlord does not recall if a second offer for a move-out inspection was made although the Landlord did ask the Tenant to meet at the unit a week or so after the Landlord was finally able to contact the Tenant. The Tenant did not attend. The Landlord states that it did not complete a move-out inspection but did provide a statement in relation to items, including a cat, that were left at the unit.

The Landlord states that the Tenant left garbage in the car port that required removal. The Landlord claims \$75.00 for the cost of this removal and provides an invoice. The Tenant states that half the garbage left had been there prior to the onset of the tenancy and the Tenants was not able to remove its own garbage due to personal matters.

The Landlord states that the Tenant left a mattress in the basement that required removal. The Landlord claims \$50.00 as the cost of this removal and provides an invoice as well as a text detailing the problems with moving out the mattress. The Tenant states that the mattress did not belong to the Tenant, was there at the outset of the tenancy and was impossible to remove from the basement.

The Landlord states that the Tenant left a cat in the basement requiring collection and removal. The Landlord claims \$50.00 as the costs for this removal and provides an invoice. The Tenant states that the cat was not hers. The Tenants states that the cat was wild and found by the Tenant who took it to the SPCA. The Tenants states that the SPCA told the Tenants to return the cat to where it was found so the Tenant did that. The Tenant states that she informed the Landlord several times that the cat was not hers. The Landlord states that at the time the Tenant was asked about the cat the Tenant was concerned about what to do with the cat as the Tenant already had 9 cats. The Landlord states that the Tenant also stated that the cat was not hers at a previous hearing.

The Landlord argues that since they are claiming compensation for the cat they were not required to return the full security deposit as this was not damage to the unit. The Tenant claims return of the security deposit and confirms that it is not waiving any entitlement to return of double the security deposit.

Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant.

Based on the undisputed evidence that no move-in inspection was conducted I find that the Landlord's right to claim against the security deposit was extinguished at the start of the tenancy.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy

Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord seeks to have the cat determined to be the property of the Tenant, I consider that the claim for the cat's removal is akin to a claim for removal of other property left behind by the Tenant such as the Landlord's claim for the removal of the mattress. I therefore find that the claim for compensation in relation to the cat is, in effect, a claim for damages to the unit. Based on the undisputed evidence that the Tenant provided its forwarding address to the Landlord on June 25, 2019 and as the Landlord's right to claim against the security deposit for damage to the unit was extinguished I find that the Landlord was required to return the security deposit in full to the Tenant. As the Landlord did not return the full security deposit I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$500.00**. Deducting the **\$125.00** already returned leaves **\$375.00** owed to the Tenant.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the Tenant's evidence that the mattress did not belong to the Tenant and as there is no move-in condition report to show otherwise, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left this belonging in the unit. I dismiss the claim for the cost of its removal.

Although the Tenant denies that the cat belonged to the Tenant given the Landlord's evidence that the cat was in the house after the Tenant moved out I find on a balance of probabilities that the Tenant allowed the cat to be in the unit and did not ensure that it was removed from the unit at move-out. Given the Landlord's invoice I find that the Landlord has therefore substantiated its claim for **\$50.00**.

Given the Tenant's evidence that half of the garbage left behind belonged to the Tenant I find on a balance of probabilities that the Landlord has substantiated that the Tenant did fail to remove its garbage. However, since there is no move-in report to detail the state of the unit at move-in and as the Tenant's evidence is that half of the garbage was not hers, I find on a balance of probabilities that the Landlord has only substantiated half of the amount claimed or **\$37.50**.

As the Landlord breached the Act in not returning the full security deposit I decline to award the Landlord with recovery of the filing fee.

Deducting the Landlord's entitlement of **\$87.50** from the **\$375.00** owed to the Tenant leaves **\$287.50** to be returned to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$287.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 11, 2019

Residential Tenancy Branch