



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain the pet damage deposit or security deposit to satisfy the claim; and to recover the filing fee for the cost of this application.

The parties both appeared, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The parties both provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. All testimony and information provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain the pet damage deposit or security deposit to satisfy the claim?

Background and Evidence

This month-to-month tenancy began on June 2, 2008 and ended on August 31, 2010, although the landlord permitted the tenant to remain in the rental unit for a few days beyond the end of the tenancy. Rent in the amount of \$1,100.00 per month was originally payable in advance on the 1st day of each month, and was reduced to \$1,070.00 in the fall of 2008 because the landlord was using some of the power for his cattle during the winter months. The rent did not increase from that amount after the first fall. On May 1, 2008 the landlord collected a security deposit from the tenant in the amount of \$550.00 as well as a pet damage deposit in the amount of \$275.00. The landlord still holds both deposits in trust.

The landlord testified that the tenant had many pets; 2 or 3 dogs and multiple cats. After the tenant had vacated the rental unit, the landlord and his wife spent 2 days cleaning the rental unit, one of those days being spent on stain removal on the carpets prior to steam cleaning. The landlord also provided photographs which he dated September 6, 2010.

The landlord testified that the tenant did not clean carpets before vacating the rental unit. The carpets required steam cleaning after the tenant vacated the rental unit, and for that service, he paid \$188.16 including HST, but did not provide a copy of that receipt. He also admitted that the carpets had not been steam cleaned prior to the tenant moving into the rental unit. No move-in or move-out condition inspection report was completed.

The landlord claims \$250.00 for the time it took him and his wife to clean the unit, including cleaning rust stains out of the bathtub; \$188.16 for carpet cleaning; and \$275.00 for the time it took him to remove stains from the carpets, although not all stains came out.

The tenant testified that the faucet in the bathtub ran constantly, and the landlord was made aware of it on several occasions. In September, 2009, the landlord's brother attended the rental unit to conduct an inspection and prepared a written report, a copy of which was provided in advance of the hearing. That report states that the rental unit was generally clean and that the cold water faucet in the tub was significantly leaking water which was immediately noted to the landlord for repairs.

The tenant further testified that she had 2 cats and 2 dogs. At one point during the tenancy, her brother moved in with a dog, but the landlord did not want another dog on the premises, so the dog went to live with her parents. The rental property was a farm with rental units on the property, and the landlord also kept cattle there. She stated there were cats in the barns and on the property that were not hers.

The tenant also stated that the carpet was not cleaned before she moved in, but she did steam clean it during the tenancy. She did not steam clean it at the end of the tenancy because the new tenants who viewed the unit prior to the end of the tenancy told her that the landlord was going to replace the carpets.

Analysis

Sections 23 and 35 of the *Residential Tenancy Act* state that the onus is on the landlord to conduct and ensure completion of move-in and move-out condition inspection reports, and state that if the landlord fails to complete those inspection reports, the landlord's right to claim against the security deposit for damages to the rental unit is extinguished. I find therefore that the landlord's right to claim the security deposit and pet damage deposit for damages has been extinguished.

The right of the landlord, however, to make a claim for damages is not barred by Sections 23 and 35. However, in order to be successful with a claim for damages, the onus is on the landlord to pass 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 tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss;
4. what steps the landlord took to mitigate such damage or loss.

I further find, from the evidence of both parties that the carpets were not cleaned prior to the tenant moving into the rental unit, and therefore, the landlord's claim for \$188.16 cannot succeed.

In regards to meeting element two of the test for damages, the landlord's position was that cleaning was required after the tenancy ended and was clearly committed by the tenants during the course of this tenancy. I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended. The landlord admitted that the carpets had not been cleaned before the tenant moved in, but has made a claim for that against the tenant in any event.

The move-out condition inspection, with both parties present, also ought to provide the tenant with information about deficiencies that the landlord might find so that the tenant would have an opportunity to correct such deficiencies (cleaning or damage) to protect the security deposit and pet damage deposit. The landlord's methodology in failing to have the tenant present to conduct a move-out condition inspection report also created a credibility problem in that the landlord was seeking to obtain an order enforcing the *Act*, after having neglected to follow the *Act*. I find serious flaws in the landlord's

evidence regarding the condition of the unit at the end of the tenancy as compared to at the beginning of the tenancy.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I order that the landlord comply with Section 38 of the *Residential Tenancy Act* by returning the deposits held in trust, with interest calculated from May 1, 2008 to the tenant forthwith.

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: January 27, 2011.

Residential Tenancy Branch