



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for 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 tenants for the cost of this application.

The landlord and one of the tenants attended the conference call hearing for both tenants, the parties gave affirmed testimony, and the landlord provided evidentiary material in advance of the hearing. No issues with respect to service were raised.

All evidence and testimony 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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties were not able to provide me with the date that this tenancy began, but the landlord testified that a written agreement was made which contained an expiry date of the fixed term of April 30, 2012 and the tenancy then continued as a month-to-month tenancy. Neither party provided a copy of the tenancy agreement. The tenants moved from the rental unit on June 30, 2012. Rent in the amount of \$1,550.00 per month was payable in advance 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 tenants in the amount of \$775.00 which is still held in trust by the landlord.

The parties did not complete a move-in condition inspection report at the outset of the tenancy, and did not complete a move-out condition inspection report at the end of the

tenancy. The landlord testified that the rental unit was no more than a year old when the tenancy began.

The landlord testified that the tenants had been asked to clean the carpet at the end of the tenancy, but they didn't do a good enough job and asked for another day to clean it better. A new tenant had already been selected for a move-in day of July 1, 2012. The new tenant wanted a new floor and the entrance and eating areas of the carpet were very bad. The landlord didn't want to argue with the new tenant, and the landlord didn't have time to clean it, so the landlord replaced the carpet with wood. The landlord claims \$1,124.08 for the cost of laminate flooring and provided an invoice to substantiate that amount. The landlord also claims \$300.00 for labor costs and provided a receipt for installation. The landlord further claims \$150.00 for loss of rent; the landlord had to reduce rent for the new tenants for the first month of that tenancy due to the state of the floors in the rental unit and the delay in moving in as a result. The landlord also claims \$40.32 for rental of a machine for cutting the laminate and \$12.00 for garbage disposal to dispose of the old carpet. The landlord provided receipts for those claims and 9 photographs of the rental unit, however only one has a marking identifying the photograph, which states: "Carpet suppose to be this."

The tenant testified that on June 30, 2012 a professional carpet cleaner was hired, but the cleaning machine stopped functioning after the living room was cleaned. The tenants wanted to find another carpet cleaning company, but the landlord would not allow more time. The tenant's new landlord wanted the tenants to move into their new rental unit the afternoon of June 30, 2012.

The parties agree that the tenants provided a forwarding address in writing on June 30, 2012.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party 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 other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to minimize the damage or loss suffered.

In this case, I have viewed the photographs, and note that one is marked on the back to illustrate what the carpet should look like. However, I cannot accept that, in the absence of any evidence of the condition of the rental unit at the commencement of the tenancy, the landlord is entitled to a new laminate floor at the expense of the tenants. Further, the landlord did not allow the tenants an opportunity to obtain another carpet cleaning company and stated that he didn't have time to clean the carpet, yet took the time to remove the carpet and install laminate. I find that the landlord has failed to satisfy elements 1, 2 and 4 in the test for damages.

The *Residential Tenancy Act* requires a landlord to ensure that a move-in condition inspection report is completed in accordance with the regulations, and must give a copy of that report to the tenants within 7 days of the date the move-in condition inspection report is completed by the parties. The landlord is also required by law to complete a move-out condition inspection report and give the tenant a copy within 15 days after the inspection is completed and the date the landlord receives the tenant's forwarding address in writing. If a landlord fails to do so, the landlord's right to claim against a security deposit or pet damage deposit for damages is extinguished, even if the rental unit is brand new at the commencement of the tenancy.

A landlord is also required to return a security deposit to the tenant within 15 days after the date the tenancy ends or the date the tenant provides a forwarding address in writing. If the landlord does neither, the landlord must be ordered to pay the tenant double the amount of security deposit. The parties agree in this case that the tenancy ended on June 30, 2012 and the tenants provided a forwarding address in writing on that day.

If a landlord's right to claim against the security deposit is extinguished, the landlord only has one option left under the *Act*, and that is to return the security deposit in full.

In this case, I find that the landlord's right to claim against the security deposit for damages is extinguished for failure to complete either of the condition inspection reports, and the landlord did not return the security deposit to the tenants. Therefore, I find that the landlord is obligated to return double the amount of the security deposit to the tenants.

With respect to the landlord's claim for damages, I find that the landlord has failed to establish that the landlord did whatever was reasonable to mitigate the landlord's loss, and the landlord's application must be dismissed.

Conclusion

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

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,550.00.

This order is final and binding on the parties and may be dismissed.

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 17, 2012.

Residential Tenancy Branch