Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKLANE MANOR APARTMENTS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNSD, OLC, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for advertising, carpet cleaning and the wages paid to the caretaker to re-rent the unit. The landlord is seeking to retain the tenant's security deposit in partial satisfaction of the claim.

The application was also to deal with the tenant's claim for the return of the security deposit not refunded by the landlord within 15 days after receiving the forwarding address and a refund for the $60.00 deposit paid for the underground parking access device.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord is entitled to monetary compensation under section 67 of the *Act* for damages?

Is the tenant entitled to a refund or credit for the security deposit and key FOB?

Background

Evidence - Landlord's Claim

The tenancy began as a one-year fixed term on January 1, 2013 with rent of $850.00 and a security deposit of $425.00 was paid. The landlord testified that,

on May 24, 2013, the tenant gave written notice that she was terminating the tenancy early, effective June 30, 2013 and the tenant vacated on that date.

The landlord testified that they immediately commenced advertising and obtained a replacement tenant on July 1, 2013.

The landlord is seeking compensation of carpet cleaning costs of $57.75, advertising costs of $60.65 and $1,605.00 "*incremental cost*" for the services of the caretaker in re-renting the unit.

According to the landlord, the tenancy agreement requires the tenant to shampoo the carpets at the end of the tenancy. The landlord pointed out that the move-out condition inspection report indicates that the tenant did not provide the landlord with proof of professional carpet cleaning at the end of the tenancy and the tenancy agreement states that, "*if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.*"

The landlord submitted an invoice dated April 9, 2013 indicating that the carpets were cleaned by a professional company at a cost of $55.00 plus GST.

The tenant acknowledged that they did not shampoo the carpets when they vacated and stated that this was because they had only been residing in the unit for 6 months. According to the tenant, they left the carpets and the unit reasonably clean as required under the Act. The tenant pointed out that the move-out condition inspection report showed the carpets as being clean and there was no indication at all that the carpets were left dirty. The tenant disputes the landlord's claimed expenditure for the cleaning costs of the carpets.

In regard to the advertising costs being claimed, the landlord testified that they have numerous ads running at all times for various rental units, but are only claiming the amount that is applicable to this unit. The landlord submitted an invoice showing the cost of all ads for the period from May 1, 2013 to May 30, 2013 totaling $363.90 and the landlord is claiming a prorated amount of $60.65. that the landlord testified applies only to the tenant's unit, and this is being claimed.

The tenant disputed the claim for advertising on the basis that it is not clear whether the advertisement pertained to the tenant's unit. The tenant pointed out that the landlord had ongoing advertisements for other units they manage and the ad for their unit is not isolated as a separate expenditure.

In regard to the cost of re-renting, the landlord pointed out that, in addition to advertising costs, $1,605.00 was paid to the care taker for the month of June 2013, and this wage specifically related to the job of re-renting services and was not the employee's regular wages. The landlord submitted copies of the caretaker's pay stubs showing remuneration of "*Net pay*" in the amount of $802.50 for the period from June 1, 2013 to June 15, 2013 and $802.50 for the period from June 16, 2013 to June 30, 2013, verifying total payment to the caretaker during the month of June in the amount of $1,605.00.

The tenant disagreed with the landlord's claims for their administrative costs of marketing, showing and re-renting the unit.

Evidence - Tenant's Claim

The tenant stated that, although she terminated the tenancy prior to the fixed term tenancy, the landlord had not suffered any loss of revenue as the unit was re-rented.

The tenant testified that they gave the landlord a forwarding address in writing on the last day of the tenancy and the landlord failed to refund the tenant's $425.00 security deposit until July 24, 2013, along with the refund for the parking key deposit of $60.00. The tenant testified that the landlord placed a stop-payment of the refund cheque.

The tenant testified that, because the landlord failed to refund the security deposit within 15 days and failed to make their application to retain the deposit within 15 days, the tenant is entitled to double the security deposit and is claiming $850.00 for the security deposit.

The landlord acknowledged that the security deposit was not refunded within the required 15 day-deadline under the Act. The landlord testified that they discussed the refund with the tenant and, in July, 2013, an agreement was reached under which the tenant would not pursue dispute resolution and the landlord would refund the security deposit to the tenant in full and would forgo making any claims against the tenant for damages. The landlord testified that they sent the tenant a refund of the security deposit and key FOB on July 24, 2013. The landlord submitted a copy of the cheque mailed to the tenant. The landlord testified that the tenant reneged on the agreement advising the landlord that she would still be seeking dispute resolution. The landlord testified that the landlord placed a stop-pay on the cheque.

The tenant testified that the landlord has not refunded the $60.00 cost of the FOB deposit, despite the fact that she had returned the FOB at the end of the tenancy. The tenant is also claiming a refund of double the $60.00 key fob deposit.

Analysis: Landlord's Monetary Claim

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. (my emphasis).

Sections 23(3) and 35 of the Act, dealing with move-in and move-out inspections, state that the landlord must complete a condition inspection report in accordance with the regulations and I find that, in this instance, the landlord complied with the Act and competed both a move-in and move-out condition inspection report which were signed. However, I find that the landlord's assumption that the tenant's signature on the report constitutes written consent that the security

deposit was forfeited, is not correct. I find that signing the move out condition inspection report does not qualify as “written permission” that the landlord may to keep the deposit, as specified under the Act.

With respect to the carpet cleaning, claim, I find that, whether or not the tenancy agreement requires that carpets be shampooed before the tenant vacates, the standard of clean imposed by the Act is “*reasonably clean*”.

I find that the tenancy did not span one year and the move-out condition inspection report verifies that the carpets were left in a clean condition.

Under sections 5 and 6 of the Act, I find that parties are not permitted to contract outside of the Act and any terms in a tenancy agreement that are not consistent with the Act will not be enforced. As the condition of the carpets has met the basic standard for cleanliness under the Act, I find that the landlord's claim for the $57.75 costs of professional carpet cleaning, to bring the condition up to a higher standard than the Act’s requirement of “*reasonably clean*”, must be dismissed.

In regard to the landlord's claim for the $1,605.00 cost of their rental agent’s salary, I find that administrative or operational costs, such as this must be borne by the landlord. In any case, the tenancy agreement does not show that the parties had agreed to any particular sum as liquidated damages for the costs of re-renting the unit, in the event that the tenancy is ended prematurely. I find that a tenant must be made aware, at the time the contract is being signed, that they will incur these particular costs, should they terminate the tenancy prematurely.

In regard to the landlord's $60.65 advertising expenses, although advertising costs would be incurred at some point when the tenancy agreement ended, I accept that it was necessary for the landlord to find a replacement renter prior to the termination date of the agreement and the landlord is entitled to be reimbursed for this additional cost.

Based on the evidence and the testimony, I find that the landlord is entitled to monetary compensation of $60.65 for advertising costs.

Given the above, I find that the landlord is entitled to total monetary compensation of $60.65.

Analysis: Tenant’s Claim for Security Deposit

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must

either: a) repay the security deposit or pet damage deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act provides that the landlord can only retain a deposit if, at the end of the tenancy, the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, the landlord has obtained an order through dispute resolution permitting the landlord to retain the deposit to satisfy a monetary claim against the tenant.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days after the forwarding address has been given, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the deposit.

I find that the tenant's security deposit was $425.00 and that the landlord failed to follow the Act by wrongfully retaining the funds being held in trust for the tenant beyond the statutory deadline. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to $850.00.

In regard to the compensation for the withheld refund for the key fob, I find that this amount does not get doubled under the Act and the tenant is therefore entitled to $60.00.

Based on the above, I find that the landlord is entitled to $60.65 for damages and the tenant is credited with $910.00, representing double the deposit retained by the landlord and the key fob refund In setting off the two monetary awards, I hereby issue a monetary order in favour of the tenant for $849.35. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave. Each party is responsible for their own application costs.

Conclusion

Both parties are partially successful and the landlord is granted entitlement to retain a portion of the tenant's security deposit, with a monetary order issued to the tenant for a refund of the remainder.

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: October 28, 2013

Residential Tenancy Branch