



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Whitworth Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF
 MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by a landlord company, and by a tenant against the landlord company and an individual. The landlord company has applied 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 tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit.

The tenant attended the hearing and gave affirmed testimony. The individual named as landlord in the tenant's application also attended, gave affirmed testimony, and represented the landlord company. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

During the course of the hearing the landlord questioned the tenant about digital evidence, indicating that no digital evidence had been received from the tenant. The tenant testified that it was given with the other evidentiary material on January 25, 2017. The landlord did not oppose the inclusion of the digital evidence, and no other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The tenant testified that this tenancy began as a fixed term tenancy on May 17, 2011 expiring on May 30, 2012 thereafter reverting to a month-to-month tenancy which ultimately ended on November 30, 2016. Rent in the amount of \$875.00 per month was originally payable on the 1st day of each month, which was raised during the tenancy from time-to-time and was \$925.00 per month as of March 1, 2016, and there are no rental arrears. Copies of the tenancy agreement and a Notice of Rent Increase have been provided by the landlord.

On June 1, 2011 the tenant paid a security deposit to the landlord in the amount of \$437.50 and a pet damage deposit of \$437.50 on July 8, 2011, both of which are still held in trust by the landlords. The tenant testified that the pet damage deposit was paid in cash to the manager at the time the tenant acquired pets, and a receipt was issued, but the tenant doesn't know where it is. A copy has not been provided for this hearing. However, the tenant relies on a Tenant Ledger obtained from the landlord, a copy of which has been provided for this hearing. It shows, in part:

Date	Description	Reference	Charges	Payments	Balance
	Balance Forward:				0.00
01-Jun-11	Res Rent Rent Residential	1013	437.50		437.50
02-Jun-11	Chq Pymt June 2011 Rent Pmt			- 875.00	- 437.50
01-Jul-11	Res Rent Rent Residential	1166	875.00		437.50
04-Jul-11	Chq Pymt July 2011 Rent Pmt			- 875.00	- 437.50
08-Jul-11	Res Rent Other 1/2 June Rent	1249	437.50		0.00
01-Aug-11	Res Rent Rent Residential	1321	875.00		875.00
02-Aug-11	Chq Pymt Aug 2011 Rental Pmt			- 875.00	0.00

The tenant testified that she circled the 2 charges of \$437.50 and marked them in ink for this hearing to show that they represent the security deposit and pet damage deposit. The tenancy agreement doesn't indicate a pet damage deposit, only a security deposit in that amount, but the tenant testified that she paid the pet damage deposit at a later date because that's when the tenant acquired a pet.

The tenant moved from one apartment to another within the complex, and the tenancy agreement followed. A move-in condition inspection report was completed by the parties on September 1, 2014. A move-out condition inspection report was also completed and a copy of both reports are contained on one document and provided for this hearing.

On November 6, 2016 the tenant gave notice in writing to the landlord's property manager to vacate the rental unit effective December 31, 2016, but it did not contain the tenant's forwarding address. The landlord's property manager took the tenant to his apartment and prepared a new notice for the tenant and wrote down the tenant's forwarding address on that document. A copy has been provided, which the tenant testified was given to the landlord on November 8, 2016.

The tenant took photographs of the rental unit on or about November 23, 2016 and actually moved out on November 18, 2016, and took about 2 weeks after that to clean. No rent was paid for December because the landlord had new tenants who commenced a tenancy during that month.

The tenant had applied for monetary compensation for return of both deposits, and a hearing was held on January 17, 2017. A copy of the resulting Decision dated January 18, 2017 has been provided which dismisses the tenant's application with leave to reapply.

At move-in, the tenant had to clean, putty and sand walls, and testified that the photographs provided by the landlord look like there are foot prints but no one went in. The landlord had ripped the bathroom ceiling out and replaced it during the tenancy, closet doors were damaged at move-in, the screen door had a hole in it and the tenant asked numerous times to have it fixed. The tenant also asked for paint for months, but never got any materials from the landlord.

The tenant had also retained a professional carpet cleaner who charged \$260.00, for which the tenant has paid \$100.00 and was permitted to pay the balance after the security deposit is returned to the tenant. However, the tenant didn't get any of the deposits back and the landlord is claiming carpet cleaning for the \$160.00 balance.

With respect to the landlords' claim for construction to replace 2 closet doors, re-paint the bathroom, minor paint touch-ups, replace the patio screen and replace the front entrance door, the tenant testified that she completed touch-ups on walls and did the mudding and sanding in preparation for painting. The landlord's resident manager told the tenant that the rental unit hadn't been painted for so many years that they didn't even have that color of paint anymore.

The tenant seeks double the amount of the deposits, or \$1,750.00 and an order dismissing the landlords' application for a monetary order for damages.

The landlord's agent testified that the rental unit is an apartment within a complex containing 64 units built in 1965.

The tenancy agreement shows that a pet damage deposit was "N/A" and none was collected by the landlord. A copy of a 6-page tenancy agreement has been provided by the landlord, which also contains a 1-page Addendum. The tenancy agreement is a printed form with blanks filled in with pen, and a box checked off beside: "PET Damage deposit; not applicable." The ledger provided as evidence by the tenant was prepared by a previous property manager of the landlord and details rent only; deposits are not reflected in there at all. The landlord's agent agrees that a security

deposit of \$437.50 was paid, but there is no proof of a pet damage deposit, and none was collected.

The landlord did not receive a forwarding address in writing from the tenant, and not the letter dated November 8, 2016 as provided as evidence by the tenant, but received a letter from the tenant on November 6, 2016. The parties had a previous hearing under the *Residential Tenancy Act*, and the tenant served the landlord with the application an hour before that hearing. The landlord received the tenant's forwarding address on that application on January 17, 2017.

The tenant had an agent attend for the move-out condition inspection, and the agent refused to sign the report. The tenant paid \$100.00 toward carpet cleaning, and the landlord's agent wrote a cheque to the carpet cleaner for the balance of \$160.00. The landlord is not seeking compensation for cleaning other than the carpet cleaning cost.

The landlord has provided a "Proposal" by a construction company for repairs to damages left at the end of the tenancy, as well as a move-in/out condition inspection report, and numerous photographs. The Proposal is dated February 15, 2017 and states: "...to finish all materials and perform all labour necessary to complete all the work described below: including replace 2 Closet Doors; Re-Paint Washroom from green to white; Minor Paint touch ups; Replace Patio Screen; Replace Front Entrance Door. All the Work to be completed ... for the Sum of \$2,180.00." The landlord's agent also testified that the rental unit was last painted about 10 or 11 years ago, however the tenant painted the bathroom lime green and was asked to repaint on move-out. The landlord is claiming closet doors in the main bedroom, one of which had a hole the size of a basketball, and the second bedroom is missing the closet door entirely. The work has not been completed yet and the new tenant accepted it in its condition on the promise that the landlord will complete the repairs in the spring. The front door cannot be purchased from a store; it requires a custom door.

The landlord has provided a Monetary Order Worksheet setting out a claim of \$160.00 for carpet cleaning and \$2,180.00 for repairs.

The landlord's witness is the resident manager and testified that the tenant had given a letter which wasn't really legible and the witness gave the tenant a type-written form and asked if it was what she wanted. The tenant was going to return it to the witness because she didn't know her forwarding address at the time.

The witness also testified that he was present when the move-out condition inspection report was completed and the report is a fair representation. Closet doors were missing at the end of the tenancy and other doors were damaged. The front door had a hole in it. The doors were perhaps 20 years old, and closet doors about the same age, but it's a difficulty because they have to be custom made due to their age. The complex was built in 1958.

During the tenancy the tenant told the witness that the tenant had painted the bathroom a few months after moving in.

Analysis

Firstly, a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return a security deposit and/or pet damage deposit to a tenant in full, or make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the landlord testified that the landlord was served with the tenant's first application for dispute resolution on January 17, 2017 which contained the tenant's forwarding address in writing. The landlord originally filed an application for dispute resolution claiming against the deposit(s) on February 15, 2017 and then amended the application on February 20, 2017. Both dates are well beyond 15 days from the date the landlord received the tenant's forwarding address in writing, and the tenancy ended on November 30, 2016. The landlord has not repaid any of the deposit(s) and has not filed the application for dispute resolution in time, and therefore the tenant is entitled to double the amount of the \$437.50 security deposit.

The parties agree that the landlord collected a security deposit in the amount of \$437.50, but disagree on whether or not the landlord collected a pet damage deposit at any time during the tenancy. I have reviewed the tenant ledger and the tenancy agreement. The tenancy agreement shows that the tenancy began on May 17, 2011 for rent in the amount of \$875.00 per month. The relevant portions of the tenant ledger are from June 1, 2011 to August 2, 2011. It shows that the balance forward prior to June 1, 2011 was \$0.00. The tenant was charged \$437.50 on June 1, 2011; \$875.00 on July 1; \$437.50 on July 8 and \$875.00 on August 1, 2011. The tenant paid \$875.00 on June 2; \$875.00 on July 4; and \$875.00 on August 2, 2011; bringing the balance to \$0.00. The tenant claims that the 2 charges of \$437.50 were the security deposit and pet damage deposit. The landlord's agent testified that neither deposit is reflected in the ledger. Considering the payments made and the dates, I am satisfied that regardless of what was charged, the tenant paid \$875.00 per month which was the amount of rent payable. I agree with the landlord's agent that the ledger does not reflect any deposits at all.

The tenant does not know where the receipt for the pet damage deposit is, and has not been able to provide a copy for this hearing. The onus is on the tenant to establish that it was collected by the landlord, and I find that the tenant has failed to. Where it boils down to one person's word over another, the claim has not been established. I dismiss the tenant's claim for return of a pet damage deposit.

With respect to the landlords' claim for damages, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the useful life of doors and closet doors at 10 years and interior paint at 4 years. Any award in favour of the landlord must not put the landlord in a better financial position than the landlord would be if the damage or loss had not existed. Further, I am not satisfied that the damages claimed by the landlord are beyond normal wear and tear, especially considering that the rental unit required painting in any event. The proposal

from the construction company does not break down the costs for individual doors or painting, but is simply a blanket estimate for repairs that are not entirely the responsibility of a tenant. Therefore, I dismiss the landlords' claim for the construction proposal.

I accept the testimony of the landlord that the \$160.00 balance due to the carpet cleaner was paid by the landlord, and the landlord has established that claim.

Having found that the landlord has established a claim of \$160.00 and the tenant has established a claim of \$875.00, I set off those amounts and I grant a monetary order in favour of the tenant for the difference in the amount of \$715.00.

Since both parties have been partially successful with the applications, I decline to order that any filing fees be recovered.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$715.00.

This order is final and binding and may be enforced.

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: March 29, 2017

Residential Tenancy Branch