



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Centre Pacific Project Marketing Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by Express Post on May 5, 2017, which requires a signature of the addressee. The landlord was given the opportunity to provide to me proof of such service after the hearing had concluded. I have now received a copy of a Canada Post cash register receipt bearing that date as well as a copy of an on-line tracking print-out confirming that the package was signed for by a recipient and delivered on May 8, 2017, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for replacement of keys and fobs and recovery of costs and time spent by the landlord preparing for this hearing?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on January 1, 2016 and expired on December 31, 2016 thereafter reverting to a month-to-month tenancy which ultimately ended on March 31, 2017. Rent in the amount of \$1,300.00 per month was payable on the 1st day of each month and there are no rental arrears. The rental unit is a condominium suite, and a copy of the tenancy agreement has been provided.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00. Although the tenancy agreement reads the amount was \$675.00, the landlord's agent testified that it was an error and that only \$650.00 was collected, which is acknowledged in the tenant's letter which provides the landlord with a forwarding address. A copy has been provided which is dated April 24, 2017 and the landlord's agent testified was received 2 days later. The landlord returned the sum of \$183.49 to the tenant on April 13, 2017, and testified that the deductions made from the security deposit were \$300.00 for cleaning and \$216.51 for the final electric bill. The tenant had also paid a \$50.00 parking deposit after the tenancy commenced, and the sum returned to the tenant included that deposit.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy, and a copy has been provided for this hearing. The parties agreed to meet for the move-out condition inspection report at 1:00 p.m. on March 31, 2017, but the tenant asked for more time. The landlord had a new tenant moving in on April 1, 2017 so it needed to be finished. The landlord's agent returned to the suite at 3:00 but the tenant still had lots of belongings in the suite and the landlord couldn't do the inspection. The landlord waited in the lobby again from 5:30 to 6:15 p.m. but the tenant still wasn't ready so the landlord's agent left.

The next day at 8:00 a.m. the rental unit had not been cleaned and some items had been left behind. The landlord sent a text message to the tenant about returning keys and the tenant said someone would take them to the landlord.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$300.00 for cleaning;
- \$984.38 for an estimate of 3 blinds;

- \$216.51 for a final electricity bill;
- \$85.00 for an estimate of carpet cleaning;
- \$41.94 for overholding;
- \$270.00 for replacement of keys/fobs;
- \$637.50 for the time the landlord's agent invested in preparing for this hearing; and
- \$12.50 for postage.

The landlord's total monetary claim is \$2,277.82.

The tenant was not permitted to have a cat, but the landlord found that there was a cat in the rental unit. At the end of the tenancy the blinds were damaged by what appeared to be cat bites.

The electricity bill is in the tenant's name but must be paid by the owner if the tenant fails to pay the bill. A copy has been provided which shows the tenant was in arrears from the previous bill, and the total amount owed is \$216.51.

The tenant didn't clean the carpet before departing which is required by the tenancy agreement. The tenant wasn't out of the rental unit in time for the landlord to have it done before the new tenant moved in, so carpets have not been cleaned.

The tenancy was to end on March 31, 2017 at 1:00 p.m. but because the tenant didn't have all belongings out and cleaning finished, the landlord claims \$41.94 for one day's rent for overholding. Although the landlord had possession on April 1, 2017 the tenant was still using the storage unit until the evening of April 1.

The landlord's agent went to the building manager on April 1, 2017 who gave the landlord's agent two fobs. After that, the tenant contacted the landlord's agent stating that someone would bring them but no one showed up. The landlord purchased two fobs at \$75.00 each, 2 suite door keys at \$35.00 each, and 2 mailbox keys at \$25.00 each, and claims \$270.00.

Analysis

The law requires a landlord to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of the tenancy in accordance with the regulations, and the regulations go into great detail of how that is to happen. The *Residential Tenancy Act* specifies:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
- 36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Regulations state:

Two opportunities for inspection

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

In this case, the landlord testified that the parties agreed to a date and time to complete the move-out condition inspection report but the tenant wasn't ready, so they agreed to another time later in the day. However, the landlord did not give a second opportunity

by providing the tenant with a notice in the approved form. That results in the landlord's right to make a claim against the security deposit for damages as extinguished, and I so find.

However, the landlord also has a claim for unpaid utilities, rent and other claims that are not damages and are in an amount greater than the security deposit. The landlord's right to make a claim against the security deposit for other than damages is not extinguished, and the landlord's right to make a claim for damages is not extinguished.

The landlord testified that he received the tenant's forwarding address in writing on April 26, 2017 and the landlord filed the application for dispute resolution on May 5, 2017, 9 days later, which I find is within the 15 days required.

Where a party makes a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

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 *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

I have reviewed the condition inspection reports and evidentiary material of the landlord, and I am satisfied that the landlord has established the 4-part test for:

- \$300.00 for cleaning;
- \$984.38 for an estimate of 3 blinds;
- \$216.51 for a final electricity bill;
- \$41.94 for overholding;
- \$270.00 for replacement of keys/fobs;

for a total of \$1,812.83.

The landlord did not complete any carpet cleaning and therefore I dismiss that portion of the claim.

The *Residential Tenancy Act* provides for recovery of filing fees, but not for costs associated with serving documents or preparing for a hearing.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord returned the sum of \$183.49 to the tenant on April 13, 2017, and testified that a portion was for a \$50.00 parking deposit after the tenancy commenced, and the sum returned to the tenant included that deposit. Therefore, I find that the landlord held \$700.00 in deposits, returned \$183.49 to the tenant, leaving a balance with the landlord in trust totaling \$516.51. I order the landlord to keep that sum in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,396.32 ($\$300.00 + \$984.38 + \$216.51 + \$41.94 + \$270.00 + \$100.00 = \$1,912.83 - \$516.51 = \$1,396.32$).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$516.51 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,396.32.

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: October 03, 2017

Residential Tenancy Branch