



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUALEX-LANDMARK RESIDENCES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord 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 recovery of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The tenant and an agent for the landlord attended the hearing, and the tenant was accompanied by another person for support. The landlord's agent and the tenant each gave affirmed testimony and were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

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 a portion of the security deposit in full satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of a portion of the security deposit?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically returning the entire security deposit to the tenant since the tenant did not agree to any portion being retained by the landlord?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on June 1, 2016 and expired on May 31, 2017 at which time the tenant was required to vacate the rental unit. Rent in the amount of \$3,050.00 per month was payable 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 tenant in the amount of \$1,525.00, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 52 suites, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that a move-in condition inspection report was completed at the beginning of the tenancy, and the rental unit was brand new. A move-out condition inspection report was completed on May 30, 2017, and a copy of both portions of the reports has been provided as evidence for this hearing. The move-out portion states that a dent appeared on the stainless steel fridge, and a photograph has been provided for this hearing. The landlord's agent does not know the actual size of the dent, however the dent cannot be repaired and a new fridge door was ordered and purchased. A copy of an invoice has been provided in the amount of \$777.00. The landlord's agents pride themselves in keeping units in pristine condition. Some wear and tear is expected on carpets and floors, but the appearance is very important to the landlord, and a dent is very noticeable. The fridge was 1 year old at the end of the tenancy.

The tenant had provided a forwarding address in writing on the move-out condition inspection report, and the landlord returned \$755.00 to the tenant on June 8, 2017. The Resident Manager emailed the controller who sent the cheque to the tenant stating that the unit number for the tenant's address was incorrect. Then the controller noticed an error in the amount of the cheque. On June 14, 2017 the controller cancelled the cheque and mailed another in the amount of \$748.00 to the tenant.

The tenant testified that she actually moved out of the rental unit on May 26, 2017.

The tenant also testified that she took great pains to respect the apartment, and conditions of the landlord, including photographing what was placed on walls, filling holes and not keeping the door open. The tenant stayed until the end of the lease even though the tenant had purchased another place, and travelled a lot during the tenancy.

The tenant further testified that she asked the landlord's manager for a walk-through of the rental unit and the manager noticed the dent in the fridge. The tenant hadn't noticed, and testified that she had not banged the door. The dent is so small it's hardly noticeable.

The landlord had already known that the placement of the fridge was wrong, having a rounded door, because the landlord had placed a stopper on the wall. However, the stopper was not in the correct place. In order to open the crispers, the tenant had to open the fridge door fully. The stopper should have been placed an inch higher so the door would make contact with the stopper instead of the wall. The curve touched the wall instead of the stopper.

The tenant has also provided a letter from a person stating that the person is a retired builder and inspected the damage to the fridge. In the writer's professional opinion, the minor damage to the fridge door was unavoidable due to its close proximity to the wall.

The tenant testified that she took extreme care of the rental unit as though it were her own and did not damage the fridge door or agree that the landlord could retain any portion of the security deposit.

Analysis

Firstly, with respect to the tenant's concern that the landlord withheld a portion of the security deposit without the tenant's consent, the *Residential Tenancy Act* states that a landlord must return a security deposit in full to a tenant or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord does neither within that 15 day period the landlord must repay the tenant double the amount.

In this case, the tenancy ended on May 31, 2017 and the landlord received the tenant's forwarding address in writing on May 30, 2017 when the move-out condition inspection report was done. The landlord made the application for dispute resolution on June 13, 2017 which is within 15 days of the date the tenancy ended. Therefore, the landlord has complied with the *Act*, and the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is dismissed, and I find that doubling of the security deposit does not apply.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I have reviewed the photograph provided as evidence for this hearing, which also contains some writing or a logo on the fridge. In comparison to the logo, the dent is about 1 millimeter by 1 millimeter. It appears to be about the size of the head of a pin. I also accept the undisputed testimony of the tenant that the landlord had installed a stopper to prevent such damage to the fridge but it was not placed correctly.

In the circumstances, I find that the dent is normal wear and tear, and the landlord's application for a monetary order for damage to the unit, site or property is dismissed.

I order the landlord to return the balance of the security deposit of \$748.00 to the tenant, and I grant a monetary order in favour of the tenant for that amount. Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is dismissed.

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 \$848.00.

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: November 22, 2017

Residential Tenancy Branch