Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tri Ho Real Estate Ltd. (dba TH Real Estate) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with a landlord's application for compensation for damage to the rental unit, cleaning, lock/key/fob replacement, and violation of a pet rule; and, authorization to retain or make deductions from the tenant's security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord served its hearing materials upon the tenants via registered mail and the tenants received the documents. Accordingly, the landlord's materials were admitted into evidence and considered in making this decision.

As for the tenant's evidence, the tenant acknowledged that they did not serve their evidence upon the landlord. As such, I did not admit their evidence. The tenants also stated that they were not disputing the landlord's damage claim, cleaning claim or claim for new lock/keys/fobs and the only component of the claim the tenants intended to dispute was the claim for a pet rule violation. The tenants requested an adjournment in order to serve the landlord with their evidence, as it pertains to the pet violation. I informed the parties that I would take evidence from the tenants orally during the hearing and I may consider allowing the tenants to serve evidence upon the landlord if I determined it necessary and appropriate after hearing the landlord's basis for seeking the pet violation fine. After hearing from the landlord, I was unsatisfied the landlord has a legal basis for seeking the amount claimed for a pet rule violation and I dismissed this component of the landlord's claim, for reasons explained in the analysis section of this decision. Accordingly, I was unnecessary to hear from the tenants on this issue or further consider their adjournment request.

I noted the named landlord was not that of an individual, corporation, organization or other type of legal entity. I asked the person appearing on behalf of the landlord to provide the landlord's legal name and he responded by stating it was his personal name. He also stated that the landlord is a corporation and he provided the corporate name. I amended the style of cause, with consent of both parties, to reflect the landlord as being the name of the individual appearing before me, the corporate name provided to me, and the operating name appearing on the tenancy agreement.

Issue(s) to be Decided

1. Is the landlord entitled to compensation, as claimed?
2. Is the landlord entitled to retain or make deductions from the tenant's security deposit?
3. Award of the filing fee.
4. Disposition of the security deposit.

Background and Evidence

The parties entered into a written tenancy agreement for a tenancy set to commence on June 1, 2019 for a fixed term set to expire on May 31, 2020. After the fixed term expired the tenancy continued on a month to month basis. The tenancy ended on August 31, 2020.

The tenants were required to pay rent of $1500.00 on the first day of every month and the landlord collected a security deposit of $750.00. The landlord continues to hold the security deposit pending the outcome of this proceeding.

The landlord requested compensation and the tenants agreed to compensate the landlord for the following:

Drywall damage	$420.00
Carpet cleaning	131.25
New lock/key/fobs	54.45
Total compensation agreed upon	$605.70

The landlord requested further compensation of $600.00 for the tenant violating the pet term in the addendum to the tenancy agreement. The tenants were not agreeable to compensating the landlord for this.

In support of the landlord's claim, the landlord relied the following pet term provided in the addendum of tenancy agreement, which I have reproduced below:

> Pet(s) Rule
> 1. Pet is Not allowed except the term been specified at the beginning of signing tenancy agreement or have another agreement made with the landlord; otherwise, the tenant will be charged $600.00 and have to move out within one month and will treat as breaking lease agreement.
>
> [Reproduced as written]

The landlord testified that in July 2020 he observed the tenants walking a dog and the tenants did not have authorization to have a pet dog. The landlord explained he did not move to evict the tenants because landlords could not evict tenants due to the Covid-19 pandemic; however, he asked the tenants to pay the amount stipulated in the pet rule but they objected.

The landlord submitted that he created the pet rule to scare or dissuade tenants from even thinking about getting an unauthorized pet by putting them on notice that they would not only be evicted but also have to pay a fine to the landlord. The landlord explained that if a tenant were to get an unauthorized pet he would move to evict the tenant and charge them $600.00 as it takes the landlord's time and effort to evict the tenant.

The landlord also stated that the rental unit is a strata unit and the strata corporation is very strict with respect to its by-laws. The landlord provided no evidence that the strata corporation fined the landlord for the tenants having a pet.

I asked the landlord to point to the relevant section in the Act or the Residential Tenancy Regulations as a basis for charging the tenants an amount for violating a pet; however, the landlord was unable to do so. The landlord indicated he relied upon a consultation he had with a lawyer and a property manager in drafting the term.

I also noted that the Addendum included additional terms that do not comply with the Residential Tenancy Regulations, in particular, charges of $100.00 for a returned cheque and a $25.00 per day late fee. The landlord stated he did not actually charge the tenants these fines even though they had been late paying rent.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The tenants took responsibility for compensating the landlord for the amounts claimed for damage, cleaning and the costs for a new lock, key and fobs. Accordingly, I award the landlord the amounts claimed for these damages or losses, which totals $605.70.

As for the landlord's claim for $600.00 for the tenants acquiring an unauthorized pet, I provide the following findings and reasons.

The landlord relies upon the pet term in the Addendum as a basis for seeking the above compensation.

Parties are at liberty to create and agree upon terms in a tenancy agreement; however, there are limitations set out in the Act in creating terms. Terms must not violate the Act or Regulations or be an attempt to contract outside of the Act, as provided in sections 5 and section 6(3) of the Act. Below, I have reproduced sections 5 and 6(3):

> **5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.
>
> 6 (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this Act or the regulations,
>
> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The pet rule in the addendum indicates the landlord may evict the tenant for acquiring an unauthorized pet. The landlord stated he did not move to evict the tenants due to the restrictions imposed upon landlords in response to the Covid-19 pandemic; however, a landlord's right to end a tenancy for cause was reinstated effective June 24, 2020. Accordingly, in discovering the tenants had a pet in July 2020 the landlord may have moved to evict the tenants. In any event, he acknowledged he did not try to evict the tenants and it is unnecessary for me to consider whether there would have been sufficient grounds for eviction as the issue to determine is whether the landlord is entitled to charge the tenants $600.00 for acquiring an unauthorized pet.

The Act provides for the amounts a landlord may charge a tenant. The Act provides for payment of rent, utilities and services or facilities to a landlord, as well as damages or losses due to a tenant's violation of the Act, regulations or tenancy agreement. The Regulations provides for fees a landlord may charge a tenant in section 7. Section 7 of the regulations is an exhaustive list of permissible fees a landlord may charge a tenant, as seen below:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(a) direct cost of replacing keys or other access devices;

(b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e) subject to subsection (2), a fee that does not exceed the greater of $15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

> (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The Regulations do not provide for a charge for a tenant having a pet, regardless of the pet being authorized or unauthorized. On another note, the landlord would be well served to familiarize himself with the limitations imposed by section 7 of the Regulations with respect to charging tenants a late fee and/or returned cheque charge or other charges and I note that there appear to be several charges in the Addendum that are not provided for under the Act or Regulations including late fees, returned cheque charges and amounts payable for guests.

Where a tenant violates the Act, regulations or tenancy agreement, the landlord's remedy is to end the tenancy (eviction). The landlord may also claim for damages or losses incurred as a result of the tenant's violation, if any; however, the Act, nor the regulations, provide for payment of a "penalty" or a "fine" for a violation. In this case, I was not presented any evidence the landlord suffered damages or losses due to the tenants acquiring a pet other than the drywall damage and carpet cleaning which the tenants have agreed to compensate the landlord.

I have considered whether the $600.00 is consistent with liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

There is no indication in the pet rule that the charge of $600.00 represents a genuine pre-estimate of damages the landlord would incur if the tenants breached the pet rule. Further, the landlord testified that the charge of $600.00 was intended to scare or dissuade the tenants from breaching the pet rule and such a stance is in keeping with a penalty, not liquidated damages. Also, I note that in a text message the landlord sent to the tenant on September 3, 2020 (included in the landlord's evidence) he referred to the $600.00 as being a "dog fine". A fine is a penalty and penalties are not liquidated damages. Finally, the subject clause indicates the landlord would consider the tenants as breaking the lease; however, the tenancy ended after the fixed term expired and the fixed term was not breached. Therefore, I find the charge of $600.00 is not consistent with an enforceable liquidated damages clause.

In light of all of the above, I find the term requiring the tenants to pay the landlord $600.00 if they acquire an unauthorized pet to have no basis under the Act or regulations and it is not enforceable. Therefore, I dismiss the landlord's claim for $600.00 against the tenants.

I make no award for recovery of the filing fee given the landlord was unsuccessful in the primary issue dispute between the parties.

In keeping with all of my findings and awards in this decision, I authorize the landlord to deduct $605.70 from the tenant's security deposit and I order the landlord to return the balance of the tenant's security deposit to them in the amount of $144.30, without delay. As provided under Residential Tenancy Policy Guideline 17: *Security Deposit and Set Off*, I provide the tenants with a Monetary Oder with their copy of this decision to ensure payment is made by the landlord, as ordered.

Conclusion

The landlord is authorized to deduct $605.70 from the tenant's security deposit and the landlord is ordered to refund the balance of the tenant's security deposit in the amount of $144.30 to the tenants without delay. The tenants are provided a Monetary Order in the amount of $144.30 to ensure payment is made.

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: December 31, 2020

Residential Tenancy Branch