



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, to keep all or part of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard.

Issue(s) to be Decided

1. Whether the landlord has sufficiently proven the tenants damaged the rental unit and the amount of loss suffered by the landlord.
2. Whether the landlord is entitled to retain all or part of the security deposit.
3. Return of the security deposit to the tenants, where applicable.
4. Award of the filing fee.

Background and Evidence

Upon hearing the testimony of both parties, I find that the parties agreed upon the following facts concerning the tenancy. The one-year fixed term tenancy began July 18, 2007. The tenants had paid a \$900.00 security deposit on July 18, 2007. The landlord and tenant had participated in a move-in and move-out inspection together. The landlord prepared an inspection report for the move-in inspection and noted that the rental unit was in new condition as it had just been constructed. The tenants vacated the rental unit July 15, 2008 and the tenant provided her forwarding address to the landlord.

Upon reviewing the documentary evidence, I find that the documentation prepared by the landlord at the end of tenancy is not an inspection report prepared in accordance

with the requirements of the *Residential Tenancy Act* (the Act) and Residential Tenancy Regulation (the Regulation). Rather, the document initialed by the tenant indicates the landlord was of the position that the carpets needed cleaning, the unit needed painting and the unit needed four hours of cleaning. The document did not include an estimate of the costs associated with these items and the tenant did not authorize any deductions from the security deposit.

During the hearing the landlord testified that estimates were obtained for carpet cleaning and a cleaning lady over the telephone, after the inspection report was initialed by the tenant. The landlord testified that the rental unit was re-rented a few days after the tenancy ended and that the new tenants hired someone to clean the rental unit; however, the landlord stated that the new tenants had not yet been compensated for the cleaning and the landlord did not supply any evidence to indicate the anticipated cost to the landlord for having the rental unit cleaned. The landlord testified that a painter provided an estimate of \$1,180.00 to patch the walls and repaint the unit; however, the documentation was not provided as evidence for the hearing.

The tenants testified that they left the rental unit clean, that they did not smoke or have pets in the unit and did not scratch or dent the walls. The tenants acknowledged that paint came off the wall when one small picture was removed from the wall.

Analysis

Section 35 of the Act provides that a landlord must prepare an inspection report at the end of the tenancy that complies with the Regulation. Sections 19 and 20 of the Regulation provides for the information that must appear on the inspection report and it includes the condition of each room in the rental unit. The one page documents entitled "End of Tenancy" prepared by the landlord does not comply with the information requirements provided by the Regulation. I find that it lacks, among other things, the

condition of each room in the rental unit. Therefore, it is insufficient to demonstrate the condition of the rental unit.

Without an adequate move-out inspection report, I was left with disputed verbal testimony concerning the condition of the rental unit at the end of the tenancy. Since the onus to prove that the tenants damaged the rental unit is upon the landlord, I find the landlord has not met this burden of proof and I dismiss the landlord's claims that the tenants damaged the rental unit. Even if the tenants had admitted to some of the damage, I find the landlord failed to provide adequate evidence to verify the amounts being claimed. Therefore, the landlord is not entitled to retain any part of the tenants' security deposit.

As the landlord's application for compensation for damages has been dismissed, I make no award for recovery of the filing fee.

I find that the landlord complied with the requirement to make an application for dispute resolution within the 15 day time limit imposed by section 38 of the Act and the landlord is not obligated to return double the security deposit. Therefore, I ORDER the landlord to return the tenants' security deposit and accrued interest of \$16.33 to the tenants forthwith. To ensure compliance with this Order, the tenants are provided with a Monetary Order in the amount of \$916.33. To enforce payment the tenants will have to serve the Monetary Order upon the landlord and may file it in court (Small Claims).

Conclusion

The landlord's claim has been dismissed in its entirety. The landlord is ORDERED to return the tenants' security deposit and accrued interest of \$916.33 forthwith. The tenants have been provided with a Monetary Order to enforce payment.

September 30, 2008

Date of Decision
