



Dispute Resolution Services

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

DECISION

Dispute Codes

MNSD, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking to keep all or part of the security deposit for damages and cleaning of the unit, and for the return of the filing fee for the Application.

Issue(s) to be Decided

Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy began on June 1, 2004. The Landlord received a security deposit of \$825.00. At the outset of the tenancy the rental unit consisted of the main and upper floors of a house and there were three Tenants.

In November of 2007, the Landlord discovered a fourth Tenant had moved into a basement suite. The rent was increased and an additional security deposit of \$125.00 was received by the Landlord.

Both parties agreed during the hearing that they had entered into a lease arrangement that originally was due to expire in August of 2008. There were two extensions to the lease. The lease ended early when the Tenants vacated the unit, which was approved by the Landlord. The rental unit property was sold to a third party in November, shortly after the Tenants vacated.

The Landlord scheduled an outgoing condition inspection report with the Tenants, however, there was a disagreement about the Landlord retaining the security deposit and the Tenants left prior to completing the report.

The Landlord applied, on time, to keep the security deposits and interest in compensation for alleged damages to the walls in the rental unit, for carpet cleaning, a missing piece of corner moulding and for the filing fee.

The Landlord gave affirmed testimony that the new owners of the property had moved into the property. She testified she was not going to fix the alleged damages. Nevertheless, she wanted to retain the security deposits and interest because she felt the alleged poor condition of the rental unit had caused her a loss on the purchase price paid to her for the property. She would not disclose the sale price or asking price because she said that was confidential to her.

The Tenants agreed that they should have paid for carpet cleaning at the end of the tenancy. They testified that when the Landlord had last inspected the property they had agreed to repair the damage to the walls by filling in the holes. There were scuff marks on the entry way walls as well. The Tenants claim they did the work except they did not apply a finish coat of paint. The Tenants supplied a letter from the new owners occupying the property stating they found the property "... in good order and very clean." They go on to state, "Since we had planned to paint before we moved in, we were pleased to see that the previous tenants had initiated the preparation by spackling all the holes in the walls."

The Tenants also claimed that the Landlord was not entitled to claim against the security deposit at all, as no incoming condition inspection had been done on June 1, 2004, when the tenancy began.

Analysis

Section 100 of the Act requires all landlords to do an incoming condition inspection report for tenancies which started on or after January 1, 2004, in accordance with section 23.

I find the Landlord failed to do an incoming condition inspection report and therefore can not claim against the security deposit.

Even without the above section being applied, I find the Landlord had insufficient evidence to show the value of the property had declined due to the condition of the rental unit, resulting in a lower sale price to her.

I also find that the evidence submitted by the Landlord for the alleged damages to the unit, do not support this claim. For example, there are a few minor scuff marks on a wall and some unmade beds in the photographic evidence, which do not support the damages she has claimed for. I find the Landlord exaggerated the damages claim.

Regardless of any other consideration, I do find the Tenants should have cleaned the carpets when they vacated. They agreed they should pay for this item.

Therefore, I award the Landlord **\$68.25** for the carpet cleaning. As the Landlord had only minor success with this claim, I find the Landlord is entitled to the return of only a portion of the filing fee in the amount of **\$20.00**.

Conclusion

Based on the foregoing, I find the Landlord has established a claim of **\$88.25**.

As the Landlord is still holding the security deposits and interest I allow the Landlord to retain \$88.25 from the deposits and interest held of \$980.80, and I order the Landlord to immediately pay to the Tenants the balance due of **\$892.55**.

The Tenants are given a formal order in that amount, which may be enforced in the Provincial Court (Small Claims Division).