



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD & FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$5,082.97 and a request to retain the full security deposit plus interest towards this claim.

Background and Evidence

The applicants testified that:

- The tenants caused extensive damage to the rental unit, and left some items behind which the landlords had to remove.
- Although they did not give the tenants a copy of the move-in inspection at the beginning of the tenancy, an inspection was done, a copy of which has been supplied for this hearing, and shows that the damages now claimed did not exist at the beginning of the tenancy.

- They attempted to do a move-out inspection with the tenants but the female tenant failed to complete the inspection with the landlords and therefore the landlord continued with the inspection with the participation of the new tenant.
- They are therefore claiming the following:

contents removal and delivery	\$50.00
Repair burns to counter top	\$1023.58
Relocate cable	\$231.00
Painting and trim repair	\$546.00
Repair siding	\$210.00
Replace damaged linoleum	\$2410.24
Carpet cleaning	\$113.40
Filing fee	\$50.00
Total	\$5027.97

The landlord withdrew the \$105.00 claim for shower re-glazing after getting a professional opinion that the damage was the result of a flaw in shower base.

The landlord also called two witnesses, the first being the previous tenant who testified that the above damages did not exist when she moved out of the rental unit. The second witness was the tenant who moved in after the respondents moved out and she testified that the above damages existed when she moved into the rental unit.

The landlord is therefore asking for an order for the above amount and for an order to allow the landlord to keep the full security deposit plus interest towards the claim.

The respondents testified that:

- The landlord did not do a proper move-in inspection and that they had never signed a copy of the move-in inspection, nor had they been given a copy as required under the Residential Tenancy Act.
- Virtually all the damages claimed by the landlord existed when the tenancy began or occurred after the tenants moved out and therefore they should not be held liable for those damages.
- They left the rental unit in as good or better condition than it was when they moved in.
- The items that were left behind were left at the request of the new tenants for the new tenants use.
- They did no damage beyond normal wear and tear and believe the landlord's full claim should be dismissed.
- The female tenant did not complete the move-out inspection with the landlord but it was due to the fact that she had recently broken her ankle and could not handle continuing with the inspection; however her husband, the male tenant, was present and the landlords never offered to continue the inspection with him.
- A second opportunity for inspection was not offered until a full 16 days after the new tenants had already been living in the rental unit.

The tenants also called two witnesses, one who testified that she was present when the tenants moved into the rental unit and that substantial cleaning had to be done by the tenants when they moved in. The second witness for the tenants testified that he helped the tenants move out of the rental unit and that he did not observe any damages to the rental unit, beyond normal wear and tear.

Analysis

Sections 23 and 24 of the Residential Tenancy Act states:

Condition inspection: start of tenancy or new pet

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) 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.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

- 24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

Residential Tenancy Branch
Ministry of Housing and Social Development

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a 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 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case the landlords admitted that they did not give the tenants a copy of the move-in inspection and therefore pursuant to section 24(2)(c), the right of a landlord to claim against a security deposit, for damage to residential property is extinguished.

Further the fact of the landlords do not have a mutually signed move-in inspection report, makes it difficult to determine what the condition of the rental unit was at the beginning of the tenancy.

The testimony of the landlord's witness as to the condition at the beginning of the tenancy is not entirely unbiased because it is in the best interest of the previous tenant to state that the unit was in good condition, because to state otherwise would be to admit to having possibly cause some damage herself. Further I'm not convinced as to the credibility of this witness because she testified that the rental unit was thoroughly cleaned when she vacated, except for two minor items, and yet on the move-out inspection report, which she signed, it shows that there was still substantial cleaning required.

The landlord's other witness was the tenant who moved in after the respondents moved out and although she can testify to the condition at that time, she was not present at the beginning of the tenancy and therefore she does not know whether or not the damages claim by the landlord pre-existed the respondents tenancy.

Further, the fact of the landlords did not complete the move-out inspection with the tenants until 16 to 17 days after the end of the tenancy, makes it difficult to know whether some of the damages claimed may have occurred in the intervening period.

The burden of proving that claim lies with the applicant and in this case it is my decision of the applicants have not met the burden of proving their claims.

Conclusion

This application is dismissed in full, and since the landlords did not have the right to claim against the security deposit for damages and failed to return the deposit within 15 days of the date that they received a forwarding address in writing, I'm required to order that the landlords pay double the security deposit to the tenants, plus interest.

The tenants paid a deposit of \$600.00 and therefore I have issued an order for the Landlords to pay \$1200.00 plus interest of \$6.76, for a total of \$1206.76 to the tenant's.

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: May 11, 2009.

Dispute Resolution Officer