



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes 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.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request to retain at \$293.45 of the tenants security deposit.

Decision and reasons

The landlord has filed a claim against the tenant's security deposit however the landlord's right to do so has been extinguished because the landlord failed to comply with the requirements of sections 23 and sections 35 of the Residential Tenancy Act, with regards to the move in and move out condition inspection reports.

I've included below, all the sections in the Residential Tenancy Act and the Residential Tenancy Regulations related to condition inspections:

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

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- (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.

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) 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.

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(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

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

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Part 3 — Condition Inspections

Rental unit to be empty

- 14** The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Tenant may appoint an agent

- 15** (1) The tenant may appoint an agent to act on his or her behalf to attend a condition inspection and sign a condition inspection report described in section 23 or 35 of the Act.
- (2) The tenant must advise the landlord, in advance of the condition inspection, that an agent will be acting for the tenant in respect of the condition inspection and condition inspection report.
- (3) The landlord must not accept an appointment or act as the tenant's agent for the purposes of subsection (1).

Scheduling of the inspection

- 16** (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.
- (2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),

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- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
- (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Condition inspection report

- 18** (1) The landlord must give the tenant a copy of the signed condition inspection report
- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
 - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
 - (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.
 - (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.

Disclosure and form of the condition inspection report

- 19** A condition inspection report must be

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- (a) in writing,
- (b) in type no smaller than 8 point, and
- (c) written so as to be easily read and understood by a reasonable person.

Standard information that must be included in a condition inspection report

20 (1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord;
- (e) the date of the condition inspection;
- (f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
 - (i) entry;
 - (ii) living rooms;
 - (iii) kitchen;
 - (iv) dining room or eating area;
 - (v) stairs;
 - (vi) halls;
 - (vii) bathrooms;
 - (viii) bedrooms;



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- (ix) storage;
- (x) basement or crawl space;
- (xi) other rooms;
- (xii) exterior, including balcony, patio and yard;
- (xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I,

Tenant's name

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

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.....

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(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) the tenant's signature indicating agreement with the deduction, and

(iii) the date on which the tenant signed.

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Since the landlord did not have the right to file a claim against the security deposit for damages and has not returned the deposit within 15 days of receiving the forwarding address in writing, the landlord must return double the security deposit to the tenants.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

Both the landlord and the tenants agreed that this tenancy ended on March 29, 2009 and the landlord stated at the hearing that she had a forwarding address in writing by March 29, 2009. The landlord did not apply for dispute resolution until April 14, 2009, which is 16 days after the end of the tenancy/date the landlord received a forwarding address in writing. Therefore the landlord did not file her application within the deadline set out in the Residential Tenancy Act, and even if she had filed within the time limit, she did not have the right to file such a claim anyway.

Therefore the landlord's request to retain \$293.45 of the security deposit is dismissed and I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

The tenants paid a deposit of \$575.00 and therefore the landlord must pay \$1150.00, plus interest of \$14.50, for a total of \$1164.50.



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Conclusion

This application is dismissed in full and I've issued an order for the landlord to pay \$1164.50 to the tenants.

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 22, 2009.

Dispute Resolution Officer