



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNR, 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 \$1284.32 and a request to retain the full security deposit of \$725.00 towards the order.

Background and Evidence

The applicants testified that:

- The tenants broke a lease before the end of the term and as a result of landlords lost four days rental revenue totalling \$193.33 and had advertising costs of \$19.98 to attempt to re-rent the unit.
- In January of 2009 they had prepaid \$300.00 to the tenants to subsidize the cable television for the full year of 2009, at \$25 a month, and since the tenants

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vacated after only three months they are requesting the return of \$225.00 of that prepaid money.

- The tenants also left the rental unit in need of substantial cleaning and repairs and the landlords are therefore asking for \$725.00 to cover the cleaning and repairs.
- They're also asking for the \$21.01 cost of postage to serve the dispute resolution packages on the tenants.
- They're also asking that the tenants pay the \$100.00 cost of the filing fee that was paid for this hearing.

The total amount requested by the applicants is \$1284.32 and they are therefore requesting an order to keep the full security deposit of \$725.00 and requesting that an order be issued for the tenants to pay them the difference of \$559.32.

The respondents testified that:

- There was a clause in an addendum to the tenancy agreement which stated that the tenants can break the lease and end the tenancy early if the tenant was required to leave the province for employment.
- They have been unable to find a copy of the addendum and the landlord has not supplied them with a copy.
- The landlord did not inform them of any need for further cleaning and repairs at the end of the tenancy and had he done so they would have arranged to have further cleaning and repairs done.
- The landlord did not do the move-in inspection report required under the Residential Tenancy Act and therefore it is just the landlord's word against theirs as to the condition of the unit when they moved in.
- They had in fact already arranged to have the downstairs tenant at the rental property take the garbage to the curb on garbage day, take the recycling to the

curb on recycling day and that many of the cleaning products left behind were for the benefit of the new tenants.

- Some of the items that the landlord claims as debris did not even belong to them, such as a cat stand and one of the Christmas trees.
- They also left a patio umbrella behind for the use of the new tenants and some items that were to be taken to a charity however the downstairs tenant was not able to do so as the landlords had locked the unit.

The respondents therefore request that this application be dismissed and that their full security deposit plus interest be returned.

Analysis

It is my decision that the respondents are liable for any lost rental revenue and for advertising costs that resulted from them ending the tenancy before the end of the lease. The tenants have not met the burden of proving that there was ever an agreement allowing them to end the lease if they had to move out of province for a work related matter. The burden of proving such a claim lies with the person making the claim and when it is just the tenant's word against that of the landlord that burden of proof is not met. I therefore allow the \$19.98 claim for advertising and the \$193.33 claim for lost rental revenue.

It is also my decision in the landlord has shown that the tenants left the rental unit in need of cleaning and repairs. The tenants claim that they had made arrangements for the removal of the "Debris"; however it's evident from the landlord's evidence that the landlords had to remove a lot of items and do some cleaning and repairs.

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Further since the landlords were rushing to get the unit ready for the new tenants it's not reasonable to expect that the landlord should have contacted the respondents to have them come back and do further cleaning and repairs.

It is my decision however that the landlord has not met the burden of proving that the cost for cleaning and repairs came to \$725.00, as a landlord has not supplied any evidence of the costs or even a record of the time spent to do the cleaning and repairs. I'm therefore only willing to allow a portion of the amount claimed for cleaning and repairs.

I will allow \$300.00 for cleaning and repairs.

I also allow the \$225.00 claim for the cable TV subsidy as this money was paid to the tenants for the full year of 2009 and they moved out after only three months.

I will not allow the \$21.01 claimed for postage, for delivery of the hearing packages to the respondents, as this is a cost of the dispute process and I have no authority to award costs, other than the filing fee and in this case I will allow the full claim of \$100.00 for the filing fee.

Section 24(2) of the Residential Tenancy Act states:

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



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

Therefore since the landlord did not complete the move-in condition inspection report, the landlords right to claim against the security deposit for damages has been extinguished; however rather than issue two orders, (one in favour of the landlord for the portion of the landlord's claim that I have allowed and one in favour of the tenant for the return of the security deposit), I have set off the amount of the security deposit, against the amount I allowed in the landlord's claim and have issued an order for the difference.

Conclusion

I have allowed \$838.31 of the applicants claim. I therefore order that the landlord(s) may retain the full security deposit plus interest:

\$ \$738.09

I further Order that the Respondent(s) pay to the applicants the following amount:

\$ 100.22

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: June 18, 2009.

Dispute Resolution Officer