



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the landlords for a Monetary Order for damages to the rental unit, for loss or damage under the Act, regulation or tenancy agreement and to recover the filing fee for this proceeding. The landlords also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant on July 30, 2009 by registered mail. The tenant confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- What is the extent of the damage to the unit, site or property? Have the landlords provided sufficient evidence that the damage is caused by actions or neglect of the tenant?
- Have the landlords provided sufficient evidence of the actual amount required to compensate him for the claimed loss or to rectify the damage?
- Are the landlords entitled to retain the tenants' security deposit?
- Are the landlords entitled to recover filing fees from the tenant for the cost of this application?

Background and Evidence

This tenancy started on November 01, 2008 and ended on July 03, 2009. The tenant paid a month rent of \$1,100.00 each month. The tenant paid a security deposit of \$500.00 on May 15, 2009. The landlords did not conduct a move in condition inspection.

The landlords claim that after the tenant had moved out of the property he left four large bags of garbage, some patio furniture and the lawn was dead. Inside the property the landlords claim that the tenant had broken three blinds and three bi-fold doors. The landlords also claim the tenant did not return the key and they incurred costs to re-key the lock. The landlords are seeking a monetary order for the following amounts:

- \$50.00 for going back and forth to water the lawn
- \$50.00 to remove the garbage bags and patio furniture
- \$100.00 to replace the blinds
- \$75.00 to re-key the lock
- \$50.00 for the filing fee

The tenant disputes the landlords claim. He has submitted evidence from a former room-mate who states that the patio furniture did not belong to the tenant but to an upstairs tenant who had left it behind when he moved out. The blinds were removed by a former tenant and stored as they were broken when she moved into the unit. The tenant or landlord did not mention the bi-fold doors. The tenant claims he hired professional cleaners to clean the unit before leaving. He met with the landlord to do a final walk through and she stated everything was good except for the food in the freezer and cleaning the outside of the windows. The tenant claims he went back the next day and did the jobs mentioned by the landlord. The tenant claims he watered the grass while he was living in the unit and this was stopped after he moved out. Due to the exceptionally hot weather during July the grass would have required watering by the landlords. The tenant states that he had one can of garbage which he forgot to leave out for the garbage

Residential Tenancy Branch
Ministry of Housing and Social Development

collectors. He also states that he did forget to return the key but had the landlords contacted him instead of paying to have the lock re-keyed he would have returned it to them.

The tenant claims he called the landlords on July 10, 2009 for the return of his security deposit. The landlords again mentioned the patio furniture and told the tenant it was his responsibility as he had used it and the cost of removing it would come out of his deposit. The tenant gave the landlords his forwarding address in writing on July 15, 2009. The landlords applied for Dispute Resolution on July 30, 2009.

Analysis

The landlords have not provided any evidence to support their claim for damage to the rental unit or for damage or loss under the act. I have applied a test to determine if compensation is due to the landlords for the aforementioned damages and loss.

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the landlords to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the landlords must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlords did everything possible to address the situation and to mitigate the damage or losses that were incurred.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

I find the landlords claim for compensation does not meet any of the components of the above test. The landlords have not submitted any evidence to support their claim of \$325.00. I also find that the landlords did not comply with section 24(2) and 38 of the Act with regard to completing a move in and move out condition inspection. Therefore, the landlords have extinguished their right to retain all or part of the tenants' security deposit.

I find the tenant is entitled to the return of his security deposit.

Conclusion

The landlord's application is dismissed in its entirety, without leave to reapply.

I Order the landlords to return the tenants security deposit to the address provided by the tenant to the amount of **\$500.00** within 10 days of today's date.

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: September 29, 2009.

Dispute Resolution Officer