



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the tenant for a monetary order for loss or damage under the *Residential Tenancy Act (Act)*, regulation or agreement and for an Order for the return of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the landlord by registered mail on June 19, 2009. The landlord confirmed he received them on June 22, 2009.

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, a decision has been reached.

Issues(s) to be Decided

- Is the tenant entitled to compensation for damage or loss and if so how much?
- Is the tenant entitled to receive double the security deposit back?

Background and Evidence

This tenancy started on June 01, 2006 and ended on April 28, 2009. The tenant was given an extra few days to clean the unit and returned the keys on May 02, 2009. The tenants paid \$620.00 in rent on the 1st of each month and also paid a security deposit of \$310.00 on or around May 10, 2006. The tenant gave the landlord their forwarding address in writing on May 02, 2009.

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The tenant claims that the landlord deducted \$100.00 from the security deposit without her permission. She also claims that the landlords' agent falsified the condition inspection report and did not give the tenant opportunity to attend the inspection. The tenant claims she spent two or three days cleaning the rental unit at the end of the tenancy and other than the carpets there was no additional cleaning required. She agreed that they would organise a carpet cleaner after the decorating had been completed. When she met with the landlords' agent on May 02, 2009 to do the condition inspection she claims the agent said the unit was still dirty and she did not sign the condition inspection form and left the unit. The tenant claims the landlords' agent has faked her signature on the inspection form.

The tenant also claims that the landlords' agent took advantage of her husband's limited English when she asked him to sign the condition inspection form on May 12, 2009 when he arrived with the carpet cleaner. The tenant states that this caused "dramatic family quarrels" between them and the tenant seeks \$300.00 in compensation for this.

The tenant also seeks \$200.00 in compensation from the landlord for not maintaining the unit properly and for the maintenance work they did to the rental unit.

The landlords' agent testifies that she met with the tenant two weeks before they moved from the unit and explained what cleaning was required to be done. The tenants moved out on April 28, 2009 and requested a few more days to clean the rental unit as the tenant was busy. The landlord agreed the tenant could have until May 02, 2009 at no further rental charge. On May 02, 2009 the agent arranged to meet the tenant to carry out the move out condition inspection report. The decorator the landlord employed to redecorate the unit was also present at this time. The agent testifies that the tenant became very angry when the agent pointed out that the unit did not appear to have been cleaned very well. She states that the tenant screamed at her and would not take part in the inspection and left the premises. The decorator was there at the time and noted that the unit was in need of extra cleaning before he could paint. The decorator has supplied a statement detailing the extra cleaning he noted had to be carried out before he could paint such as cleaning the walls, and cabinets in the kitchen covered in cooking oil and pencil marks. The window sills and walls around the windows required deep cleaning. The bathroom

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cabinet doors required replacement prior to painting. The decorator comments on his general observations as to the condition of the unit. He states that everything in the kitchen including the appliances, floor and cabinets were dirty and sticky and the bathroom was also the same. The drapes were unusable and the carpet had not been vacuumed.

The landlords' agent spent many hours cleaning the unit and as agreed with the tenant she called to let them know the painting was finished so they could organise the carpets to be cleaned. On May 12, 2009 the tenants' husband came to clean the carpets and remarked to the landlords' agent that the appliances looked new. She explained that they had just been cleaned thoroughly and he willingly signed off on the condition inspection report and agreed to the \$100.00 deduction towards the cleaning costs.

The landlords' agent points out that the female tenant did not sign the form and they have not faked her signature. Her name has been printed on the form so the correct spelling of her name could be used for the cheque for the balance of the security deposit. The landlord returned the remainder of the tenants' security deposit by cheque on May 15, 2009.

The landlord has paid a total of \$765.00 for cleaning and repairs to the unit of which he has only charged the tenant \$100.00. The landlord has also incurred an additional cost of \$1,000.00 for repainting the unit of which he is not charging the tenant as this is a service done when ever the unit is re-rented. The landlord has also provided an invoice dated December 10, 2008 detailing the repairs that were carried out on the tenants unit at that time.

Analysis

I have carefully reviewed all the evidence and testimony from both parties. I find the landlord has acted pursuant to sections 35 and 38 of the *Act* with regard to the condition inspection report and the return of the tenants' security deposit. As the landlord received the tenants' forwarding address in writing on May 02, 2009 he had 15 days to return this to the tenant. I agree with the landlords' evidence and testimony of his agent that the tenants' husband signed the move out condition inspection on May 12, 2009 and agreed at this time that the landlord

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could retain \$100.00 of the security deposit towards the landlords cleaning expenses. As the tenants' husband is a responsible adult included on the tenancy agreement I have accepted that he understood what he was signing. The landlord sent the tenant the balance of the security deposit on May 14, 2009, within the 15 days allowed under the *Act*.

The tenant disputes this and states that the condition inspection report was not filled in and her husband did not sign the report. In this matter, the tenant has the burden of proof and must show that the landlord has acted in a fraudulent manner with regards to the move out condition inspection and the signing of this form. The tenant contradicts her own evidence in this instance. Her written evidence pertains to the claim for damages for the "dramatic family quarrels" caused because her husband signed the condition inspection form and agreed to the landlord keeping \$100.00 from the security deposit and in her testimony at the hearing she states that it is not her husband's signature on the form. In the absence of any corroborating evidence, I find that the tenant has not provided sufficient evidence to show that her husband's signature has been obtained in a fraudulent manner and I find that the landlord has acted in accordance with the *Act*. Therefore, I dismiss the tenant's claim for double the amount of the security deposit without leave to reapply.

The tenant had intended to call witnesses to give evidence to the fact that she did not sign the condition inspection form or authorize the deduction. However, by the tenant's own admission neither of these witnesses were present at the time when the tenant met with the landlord's agent. Therefore, they can not give evidence as to something they did not witness and I have not allowed their testimony.

I find the tenant is not entitled to damage or loss under the *Act* and dismiss her claim for \$300.00 for emotional distress caused by a family argument. The landlord is not responsible for arguments between husband and wife and as such I find the tenant's claim has no merit. The tenant also claims \$200.00 for damage or loss under the *Act* for maintenance to the rental unit. Pursuant to section 32 of the *Act*:

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A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find the landlord has carried out repairs that the tenant asked for and has provided invoices detailing the repairs made in December, 2008. It is the tenants' responsibility to ask the landlord in writing to carry out any other repairs that may be required of which fall under the landlord's reasonability and any other repairs from damages caused by the tenants are the tenants' responsibility. As the tenant has not submitted any evidence to support this section of her claim it is dismissed without leave to reapply.

Conclusion

I find the landlord has carried out his obligations under the *Act* and I dismiss the tenants' application in its entirety without leave to reapply.

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: October 02, 2009.

Dispute Resolution Officer