



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord - MND, MNSD

For the tenant – MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The landlord seeks a Monetary Order for damage to the unit and an Order to keep all or part of the tenants' security deposit. The tenant seeks the return of her security deposit and to recover the filing fee

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Did the tenant give the landlord her forwarding address in writing?
- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to a Monetary Order to cover the additional costs for repair to damages and cleaning of the rental unit?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

Both parties agree that the tenancy started on June 01, 2008. This was a fixed term tenancy for one year and it ended on June 01, 2009. Rent for this unit was \$1,425.00 per month which was due on the 1st of each month. The tenant paid a security deposit of \$700.00 on May 20, 2008. No move in condition inspection was carried out at the outset of the tenancy.

The tenant testifies that at the end of the tenancy the landlord gave her two dates to attend a move out condition inspection. However, the tenant states that the landlord did not follow through on these dates and the tenant waited for a time to attend the move out condition inspection. She states that the landlord went ahead and did the inspection in her absence. The tenant claims that the unit was not clean and the landlord had left a number of items in the cupboards when the tenant moved into the unit. The tenant states that the damages the landlord states the tenant caused are not factual and the tenant left the rental unit in a good state of repair and cleanliness with the exception of the oven which she omitted to clean before she left. The tenant testifies that she gave the landlord her business address as a forwarding address by leaving her business card at the rental unit.

The landlord states the tenant was given two dates to attend the move out condition inspection and she sent the tenant an e-mail stating when the inspection would take place. The landlord claims the tenant did not appear and the inspection was carried out in her absence. The inspection and photographic evidence highlights some damages and cleaning which the landlord claims were caused by the tenants' actions or neglect of the rental unit. The landlord claims the tenant damaged a shelf in the fridge, caused damage to the carpet and did not clean the unit thoroughly before she moved out.

Analysis

As the tenants' evidence contradicts the evidence of the landlord with regard to the damages and cleaning of the unit I have looked at what documentary evidence is available in the form of a move in/move out condition inspection report. In this instance the burden of proof is on the

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landlord 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.

I find that the landlord failed to carry out a move in condition inspection pursuant to s.23 of the Act. Therefore, without this inspection there is no evidence to determine the condition of the rental unit at the outset of the tenancy. The landlord has provided photographic evidence of the rental unit however these are undated and therefore do not determine on what date they were taken. Section 24 of the Act states:

24 (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.

The tenant did agree that she failed to clean the oven at the end of the tenancy. Therefore, I find the landlord is entitled to receive some compensation for the time she took to clean the oven at an hourly rate of \$20.00 for two hours cleaning.

The remainder of the landlords claim for damages and her claim to keep all or part of the tenants' security deposit is dismissed.

In regards to the tenants claim for double the return of her security deposit. I find she did not leave her forwarding address in writing with the landlord at the end of the tenancy but instead

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left her business card for the landlord to use her business address for any future correspondence. Section 39 of the Act states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find that the tenants business address on a business card does not comply with the act in so far as providing her forwarding address in writing. However, I will accept that the tenant gave the landlord her forwarding address on her application for dispute resolution served on the landlord on June 20, 2009. The landlord had fifteen days from receiving the address to either return the tenants' security deposit or file an application to keep it. The landlord filed her application on June 26, 2009. However, as the landlords' application has not been successful she is not entitled to keep the tenants security deposit and must return it to her within 15 days of today's hearing. As the landlord did apply for dispute resolution within the 15 days and the tenant did not give the landlord her forwarding address in writing until she filed for dispute resolution, I find the tenant is not entitled to recover double her security deposit.

As I have found the landlord is entitled to keep \$40.00 from the tenants security deposit for the oven cleaning the tenant admitted she did not do, the tenant is entitled to recover the balance plus accrued interest.

As the tenant has been partially successful with her claim she is entitled to recover her \$50.00 filing fee from the landlord. A monetary Order has been issued for the following amount:

Security deposit plus accrued interest	\$706.48
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Less amount due to the landlord for oven cleaning	(-\$40.00)
Total amount due to the tenant	\$716.48

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$716.48**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND the landlord is entitled to recover \$40.00 fro the tenant and this amount has been deducted from the tenants' monetary Order. The remainder of the landlords' application is dismissed 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 20, 2009.

Dispute Resolution Officer