



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, 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 the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This was a request for a monetary order for \$1000.00 however the applicant subsequently reduce the claim \$668.49.

Background and Evidence

The applicant testified that:

- The tenants terminated the tenancy prior to 12 months of occupancy and therefore pursuant to a clause in the tenancy agreement they are required to pay a \$400.00 fee to cover the costs associated with re-renting the premises.
- The tenants were given seven keys at the beginning of the tenancy however they only returned four and therefore the landlord had to have the locks re-keyed.
- The tenants did not leave the premises completely clean and as a result the landlord had to do some cleaning.

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- The tenants failed to properly dispose of a box spring, leaving it beside the dumpster and since the city would not remove it until it was put in the dumpster the landlord had to put it in the dumpster.
- The tenant had her boyfriend living at the rental unit without the landlord's authorization and there's a clause in the tenancy agreement allowing the landlord to charge additional rent for additional occupants at the landlord's discretion.

The applicant is therefore requesting an order as follows:

Early termination re rental fee	\$400.00
Cleaning	\$30.00
Box-spring removal	\$30.00
Unauthorized occupant	\$50.00
Filing fee	\$50.00
Total	\$668.49

The respondent's testified that:

- The tenancy agreement, which was written by the landlord, is not clearly written as it states that it is a month-to-month tenancy in one section of a tenancy agreement and then later says that if the tenancy should terminate prior to a 12-month occupancy the tenants will be subject to a mandatory fee of \$400.00 to cover the costs associated with re-renting the premises.
- They moved into the rental unit on the 8th of August 2008 and paid a pro-rented monthly rate of \$1000.00 for August 2008, rather than the full \$1295.00, and therefore it is their belief that August 2008 was the first month of their tenancy and the 12th month of the tenancy was July 2009. Therefore when they left at the end of July 2009 it was at the end of the 12th month of their tenancy.

- At the beginning of the tenancy the landlord only gave them 4 working keys. The other 3 keys given to them by the landlord did not work in any of the doors to the rental unit, and therefore they were discarded. At the end of the tenancy all working keys were returned to the landlord.
- When they vacated the rental unit they left the unit in clean condition as they spent a considerable amount of time cleaning it and they do not believe that the landlord should be allowed to charge anything further for cleaning.
- They did leave a box-spring beside the dumpster for pickup by the city and they were not aware that the city would not pick up the box-spring if it was not in the dumpster; however all the landlord would have to do is lift the box-spring into the dumpster and it's not reasonable to be charging \$30.00 to do that.
- Although the tenants boyfriend did at times stay over at the rental unit he was not a tenant there and did not occupy the rental unit. He had his own rental unit in Whistler where he paid rent on a regular basis and therefore he was simply an invited guest and not an occupant and should not be charged for that.

Analysis

Early termination fee

It is my decision that the tenants met the obligations of the tenancy agreement. This tenancy did not begin on the first of August 2008, it began on the 8th of August 2008 however the tenants paid a prorated amount for the month of August 2008 and then rent became due on the first of the month for all months following. It is my finding that since they were there for the majority of the month of August 2008, that was the first month of their tenancy and therefore the 12th month of their tenancy was July 2009. Since the tenants vacated at the end of July 2009 it is my decision they are not liable for the \$400.00 Fee claimed by the landlord.

Further, because the landlord called this a month-to-month tenancy, the tenants had the right under the Residential Tenancy Act to end the tenancy by giving one clear months notice and therefore they could have ended this tenancy at any time. The Act does not allow the landlord to charge a penalty if a tenant gives notice in a method allowed under the Act and therefore the landlords clause requiring the tenants to pay \$400.00 if they don't stay for 12 months is not enforceable unless this were a fixed term tenancy of at least 12 months.

Locksmith charge

The landlord claims to given seven working keys to the tenants; however the tenants deny receiving seven working keys and claimed to have received only four working keys, and three keys that did not work.

It is my decision that the tenants should have returned all the keys that they were given. The move in inspection report lists seven keys as having been given to the tenants and the tenants admit that the only returned four. The tenants claim that three of those keys did not work, however it is just their word against that of the landlords and therefore they have not met the burden of proving their claim that the keys did not work.

I therefore allow the landlords \$108.49 claim for lock re-keying.

Cleaning

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high

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standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required

I therefore will not allow the claim for cleaning.

Mattress/box-spring disposal

I also deny the claim for disposing of the box-spring. I realize that this may have been a difficult task for a smaller person however it is my decision that it is not reasonable to charge \$30.00 to lift a box-spring into a dumpster.

Unauthorized occupant

It is my decision that the landlord has not met the burden of proving that the tenant's boyfriend was living in the rental unit. It is basically just her word against that of the tenants and the tenant claims that he was just an on and off overnight guest. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Further, although the Residential Tenancy Act does allow a landlord to vary the rent depending on the number of occupants, the tenancy agreement must specify by how much the rent will vary per occupant. Therefore, since the landlord's tenancy agreement does not specify by how much the rent will vary, simply stating the monetary sum will depend on the specific circumstances, in this case the landlord would not be able to charge a more rent if another occupant moved in.



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Filing fee

It is my decision that the landlord must bear the cost of the filing fee that she paid for today's hearing as I have only allowed a small portion of the amount that she is claiming.

Conclusion

I hereby order that the landlord may retain \$108.49 of the tenant's security deposit and the remaining \$541.51, plus interest of \$4.00 for a total of \$545.51 must be returned to the tenants and I have issued an order for the landlord to do so.

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: December 01, 2009.

Dispute Resolution Officer