

DECISION

Dispute Codes

Landlord: MNSD, FF
Tenant: MNSD, RPP, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the parties. The landlord has applied for an order permitting the landlord to retain the security deposit, and to recover the filing fee from the tenant for the cost of this application. The details of the landlord's application states that cleaning costs and painting costs are claimed against the security deposit. The tenant has applied for return of the security deposit, return of personal property and to recover the filing fee from the landlord for the cost of this application.

The landlord's agent provided photographs to the Residential Tenancy Branch the day before the scheduled hearing, and the tenant stated that she did not receive those photographs. The landlord's agent applied to adjourn the hearing in order to provide him with a further opportunity to provide photographs and other evidence. The tenant opposed the application for adjournment stating that the landlord's agent had plenty of opportunity to provide that evidence in advance of today's hearing date. When questioned why he waited so long to submit his evidence, the landlord stated he had been busy.

The Landlord's Application for Dispute Resolution was filed on April 15, 2010. The Residential Tenancy Branch Rules of Procedure require that the parties exchange evidence and provide that evidence to the Residential Tenancy Branch as soon as possible, and at least 5 days before the dispute resolution proceeding. I find that the tenant would be prejudiced by an adjournment, and I find that the landlord's agent had 4 months between the time the landlord's application was filed and the hearing date, and the tenant is entitled to be heard at today's scheduled hearing time. Therefore, the copies of the photographs received by me 1 day prior to the hearing cannot be considered. Further, the application by the landlord to adjourn the proceedings to allow more time to submit evidence is dismissed.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the landlord entitled to retain the security deposit?

Is the tenant entitled to return of the security deposit?

Is the tenant entitled to an order for the return of personal property?

Background and Evidence

This month-to-month tenancy began approximately February, 2009. Neither party was able to provide me with the date. The tenancy ended on March 31, 2010 after the tenant gave notice to vacate the premises.

Rent in the amount of \$475.00 was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$237.50. Both parties testified that no move-in condition inspection was conducted prior to moving into the unit, and no move-out condition inspection was done.

The tenant provided her forwarding address in writing by texting the landlord's agent on or about April 14, 2010.

The landlord's agent testified that the unit, which is an apartment in a 24 unit apartment building, had not been properly cleaned by the tenant prior to vacating. He stated that he had to replace the oven element rings because they were rusted and had food caked on, at the cost of \$18.86. He further claimed \$75.00 for general cleaning:

- drippings and crumbs from the stove onto the oven drawer;
- spillage in the bottom of the fridge and the fridge door;
- a strip between the stove and cupboard was left soiled with cat hair;
- the perimeter of the kitchen and entry area were not swept;
- the vinyl baseboard in the kitchen area under the cupboard was matted with cat hair;

- shelving in the cupboards were not cleaned;
- spillage was left in the gap between the fridge and wall;
- toilet and area around the toilet was not cleaned;
- bathroom vanity not cleaned inside;
- wax stain appears on wall in bathroom;
- cat hair was left in the baseboard heaters;
- closet door hinge and window tracks were caked with cat hair;
- debris was left in the kitchen drawers;
- walls were left dirty;
- ceiling fan was not dusted;
- stove handle not wiped;
- kitchen and bathroom taps were not cleaned.

The landlord's agent further testified that the carpet had been cleaned but required cleaning professionally because of the cat odour in the unit, at the cost of \$107.00. He also stated that he had to paint at a cost of \$48.00.

The tenant provided photographs in advance of the hearing, and testified that she left the unit in a clean state, as evidenced by the photographs. She stated that she did clean the carpets, and provided a photograph that shows a carpet cleaner in the unit. She further pointed out bottles and cleaning supplies on the kitchen counter in one of the photographs. The tenant also testified that the cat odour existed before she moved into the unit.

The tenant also stated that she had left 4 Ikea mirrors in the unit, and the landlord had indicated that they were hers and she could take them, however he was not opposed to leaving them in the unit. The tenant chose to leave them in the unit. Her application now seeks to have the mirrors returned to her.

Analysis

The *Residential Tenancy Act* states, at Section 35, that the landlord and tenant must inspect the condition of the rental unit before a new tenant moves in, and that the

landlord must offer the tenant at least 2 opportunities for the inspection. If, during that inspection, the landlord is not satisfied with the condition of the unit, that must be stated during the inspection and the tenant would then have the opportunity to correct any issues raised by the landlord, which did not happen in this case. The *Act* places the onus on the landlord to conduct that inspection. The landlord is seeking to obtain an order enforcing the *Act*, after having neglected to follow the *Act*. The *Act* also states that the landlord's right to claim against a security deposit is extinguished if the landlord has not complied with Section 35. I find that the landlord's right has been extinguished.

With respect to the damage claim by the landlord, I have no evidence before me of what the condition of the unit was before the tenant moved in as opposed to the condition when the tenant vacated. Also, in order to be successful with a claim for damages, the onus is on the claiming party to prove:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's negligence or actions that are in breach of the *Act* or the tenancy agreement;
3. The amount claimed;
4. What steps the claiming party made to mitigate the damages.

The landlord has not provided any receipts for carpet cleaning, paint or the oven element rings. Further, Section 32 of the *Act* states that the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. It may very well be that the landlord has a higher standard than the tenant however the *Act* does not require the tenant to meet those higher standards. I find that the landlord has failed to prove his claim by failing to prove the amounts, by failing to do condition inspections at the beginning and at the end of the tenancy, and by failing to provide evidence in accordance with the *Act* and Rules of Procedure.

With respect to the tenant's claim for the return of personal property, I find that the tenant did leave the mirrors in the unit purposely and spoke to the landlord's agent about it. The tenant is not entitled to the return of those items now several months after the tenancy has ended, having offered to leave them on the walls when she vacated the unit.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The tenant's application for return of personal property is hereby dismissed without leave to reapply.

I find that the tenant has established a claim for the security deposit of \$237.50, and no accrued interest. The tenant is also entitled to recover the \$50.00 filing fee for the cost of this application. I grant the tenant an order under section 67 for the balance due of \$287.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 29, 2010.

Dispute Resolution Officer