



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$536.73, a request that the respondents bear the \$50.00 cost of the filing fee, and a request that the applicant be allowed to retain 586.73 of the security deposit towards this claim.

Background and Evidence

The applicant testified that:

- At the beginning of the tenancy, the tenant stated that he was unavailable to participate in the move in inspection, and therefore she verbally offered him a second opportunity to participate in a move in inspection however the tenant stated he was not available and therefore no move in inspection was ever done.
- Everything in the suite was in good condition when the tenants moved in.

- When the tenants moved out the landlord found the following:
 - Many louvers on the custom California shutters had been broken and were in need of repair.
 - The tenants had attempted to hide the fact that the shutters were broken, by carefully positioning them.
 - The suite was left dirty, oven, sinks, balcony, baseboards, shutters, windowsills, countertops, and surfaces inside and outside the kitchen cupboards were not clean and pots and pans and food were left in the cupboards.
 - As a result of the dirty condition three hours of cleaning was required.
 - The tenants also left some bulbs in the rental unit either missing or burned out.
 - The tenant became very aggressive during the move-out inspection and subsequently abandoned during the inspection without even signing the move-out inspection form.

Witness for the landlord testified that:

- He was present at the beginning of the tenancy, and overheard the landlord attempting to reschedule a move in inspection over the phone with the tenants.
- The rental unit was in good condition when the tenants moved in.
- When the tenants moved out of the rental unit it was left in a deplorable condition and he had to do three hours of cleaning, as it was poorly cleaned, and the kitchen was a grease pit.
- The shutters were left dirty and broken at the end of the tenancy, and he heard the male tenant state he had broken some of the blinds, but was claiming it was normal wear and tear.

The applicant is therefore requesting an order as follows:

Cost to repair broken shutters	\$393.75
Three hours of cleaning	\$50.00
Burned-out light bulbs	\$14.00
Filing fee	\$50.00
Total	\$586.73

The respondent's testified that:

- The landlord never offered a date for a move in inspection, and the first he heard about any move in inspection was when they landlord phoned to ask them to come over to do an inspection.
- He was unable to do in inspection at that time, and the landlord never supplied a second opportunity to inspect.
- Therefore no move in inspection was ever done.
- When they moved in some of the shutters were already broken, and the rest of the shutters broke under normal daily use. There was never any improper use of the shutters.
- When they moved out they left the rental unit in a very clean condition.
- They had numerous friends from the church come over and assist them in cleaning, and the female tenant even came back and did some further cleaning on the evening of the day they moved out.
- They left the rental unit in a good state of cleanliness.
- There was one burned-out bulb, which burned out on the day they were moving out.
- Both they and the landlord got into a disagreement during the move-out inspection, it was not one-sided and the landlord was being just as aggressive as they were and as the move-out inspection was already completed they decided to just leave, however they admit they did not sign the move-out inspection report.

The respondents therefore believe that the landlord's application should be dismissed in full, and that their full security deposit should be returned.

Analysis

Move in inspection report

Section 23(3) of the Residential Tenancy Act states:

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 17 of the Residential Tenancy Regulation states:

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

The landlord testified that she verbally proposed a second opportunity to do the move in inspection; however she further stated that she did not propose a second opportunity, by providing the tenant with a notice in the approved form.

Therefore it is my finding that the landlord has failed to comply with section 23(3) of the Residential Tenancy Act.

Section 24(2) of the Residential Tenancy 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]*,

Therefore the landlord's right to claim against the security deposit under section 38 for damages has been extinguished.

The landlord has also filed a monetary claim under section 67, and I am able to proceed with a monetary claim under section 67.

Broken shutters

It is my decision that the landlord has not met the burden of proving that the damage to these shutters was caused by any wilful or negligent actions on the part of the tenants.

The tenants testified that the shutters broke under normal daily use, and not as a result of anything inappropriate that they had done.

The landlord has supplied no evidence to show that this damage was the result of any negligence, and although the tenants admit that some of the shutters did break during their tenancy, they have always claimed it was normal wear and tear.

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.

I therefore deny the claim for repair of the shutters.

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 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.

Photo processing

This is a cost of preparing for the dispute resolution process, and I have no authority to award costs.

Burned-out light bulbs

The applicant has provided no evidence of having purchased any light bulbs.

Conclusion

This application is dismissed in full without leave to reapply and I have issued an order for the landlord to return the full security deposit of \$712.50 to the tenants.

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: August 30, 2010.

Dispute Resolution Officer