Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlords for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to a monetary order for the return of double their security deposit?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2009 and ended on March 31, 2010 and that a $775.00 security deposit was paid at the outset of the tenancy. The parties further agreed that a condition inspection report was not completed at the end of the tenancy.

The tenant testified that when he gave his notice to end the tenancy he provided the landlords with his forwarding address in writing. The landlords denied having received the tenants' forwarding address in writing.

The landlords provided evidence showing that on the tenancy agreement the tenant agreed to pay $35.00 per month for garbage collection and water. The landlords testified that the parties later agreed that the tenant should only be responsible for

$28.00 for water and should not be obligated to pay for garbage collection. The tenant acknowledged having signed the agreement but testified that he was told by the Residential Tenancy Branch that he should not be responsible for paying for water or garbage collection. The tenant could not recall agreeing that the $35.00 charge would be reduced to $28.00.

The landlords testified that at the end of the tenancy they noticed that the garage door didn't close completely, stopping approximately 12 – 14" above the driveway. The landlords testified that there was damage to the pulley system which had apparently been improperly repaired. The landlords provided a receipt showing that they paid $100.00 to have the pulley system repaired. The landlords claimed that the tenant verbally agreed to pay up to $100.00 to repair the door. The tenant testified that the garage door stopped approximately 2" above the pavement and attributed this to reasonable wear and tear. The tenant denied having attempted to repair the pulley system and further denied having agreed to repair the door.

The landlords testified that the tenants failed to adequately clean the inside and outside of the windows and tracks at the end of the tenancy. The landlords claimed that they spent a total of 14 hours cleaning windows and tracks and seek to be compensated at a rate of $18.00 per hour. The tenant testified that he "wiped down" everything at the end of the tenancy.

The landlords seek to recover the cost of preparing evidence for this dispute.

Analysis

In order to trigger the landlord's obligation to deal with the security deposit, the tenants must provide their forwarding address in writing at the end of the tenancy. I find that the tenants have failed to prove that they provided their forwarding address in writing to the landlords at the end of the tenancy and accordingly I dismiss their claim for double the security deposit.

The tenants are obligated to abide by the terms of the tenancy agreement unless they can prove that such terms are unconscionable or contrary to the Act. I can find no reason why a term requiring the tenants to pay for water should not be enforced. The parties agreed that the tenants paid for water for the month of April 2009. I find that the landlords are entitled to recover $308.00 which represents water payments at a rate of $28.00 per month for the months of May 2009 – March 2010 inclusive and I award the landlords that sum.

I find it more likely than not that the tenants caused the problem with the garage door. There is no indication that the tenants complained to the landlords during the tenancy that the garage door was not closing properly and I find it unlikely that the tenants would have tolerated this deficiency. I do not accept that this is reasonable wear and tear as I find it unlikely that regular use of the door would cause a problem of this nature after only a year. I find the cost of the repair to be reasonable and I award the landlords $100.00.

I dismiss the landlords' claim for the cost of cleaning the windows and the tracks. The landlords were responsible to clean the outside of the windows and there is no pictorial evidence showing that the inside of the windows or the tracks were as dirty as the landlords' claim. I also find that the time spent cleaning windows is greatly exaggerated. In the absence of a written condition inspection report, which the landlords were legally required to complete at the end of the tenancy, I find that the landlords have failed to meet the burden of proving that the windows and tracks required cleaning.

The landlords' claim for the cost of preparing for this hearing is dismissed as under the Act, the only litigation-related expense I am empowered to award is the filing fee. I find that the landlords are entitled to recover the $50.00 filing fee and I award them that sum.

Conclusion

The tenants' claim is dismissed. The landlords are awarded $458.00 which represents $308.00 for water, $100.00 for the garage door repair and $50.00 for the filing fee. I order the landlords to retain $ from the $775.00 security deposit in full satisfaction of their claim and I order the landlords to return the balance of $317.00 to the tenants forthwith. I grant the tenants a monetary order under section 67 for $317.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: August 03, 2010

Dispute Resolution Officer