



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord – MND, MNSD, FF

For the tenant - MNSD

Introduction

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

The landlord served the tenant by registered mail on April 29, 2010 with a copy of the Application and Notice of Hearing. The tenant served the landlord by registered mail on May 26, 2010 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both landlords appeared and the tenant and his advocate 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

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to keep the tenants security deposit?
- Is the tenant entitled to recover double his security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on October 08 or 09, 2008 and ended on November 28, 2009. The tenant paid a monthly rent for this unit of \$550.00. The tenant paid a security deposit of \$275.00 on October 07 or 08, 2008. No move in or move out condition inspection was carried out at the beginning or end of the tenancy. The landlord was sent the tenants forwarding address on December 06, 2009 and again on April, 16, 2010.

The landlord testifies that the tenants furnished room was clean and freshly painted at the start of the tenancy with the exception of the floor which the landlord states he went back to clean the next day. The landlord states that while the tenant lived in the unit he failed to clean it and the landlord had to have someone else come in to clean the tenants' room. At the end of the tenancy the landlord testifies that he found the tenant had caused damage to the unit. A window was broken, there were holes in a wall, the walls were filthy, the unit was left unclean, the bed was covered in blood and urine and had to be thrown away, a closet door was broken beyond repair, and a chair was left soiled with alcohol, food or urine.

The landlord seeks costs to rectify this damage and clean the rental unit of \$420.00. The landlord requests an Order to keep the tenants security deposit in partial payment of this.

The tenant disputes the landlords' claims. His advocate states that a member of staff from Progressive Housing accompanied the tenant to the unit on the day he moved in and found the unit was not clean. This member of staff has written a letter in evidence to confirm this.

The tenants advocate states the landlord has failed to comply with the Act by returning the tenants security deposit within 15 days of receiving his forwarding address in writing or making an application to keep it within the 15 days.

The tenant testifies that when he moved in his unit was not secure it had no lock or door knob and the landlord told him to put a latch on it. He claims someone came in through the window and stole some of his belongings. The tenant states that nothing was broken during his tenancy and the closet door was already broken on the day he moved in. The tenant claims the walls were so dirty he did not even want to hang pictures up. He claims the staff member from Progressive Housing contacted the landlord on his behalf to repair and clean the unit but the landlord did nothing about it.

Analysis

With regards to the landlords claim for damage to the rental unit; I have applied a test used to determine if the landlord has meet the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant 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 respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

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I find that the landlords claim for damages does not meet all of the components of the above test. The landlord did not conduct a Move in or Move out condition inspection to establish what damage or cleaning was done during the tenancy for which the tenant could be held reasonable. The landlord has submitted some photographs of the tenants' room which does show damage as described by the landlord but nothing to determine that the tenant was responsible for the damage or unclean conditions. Consequently, I find the landlord has not met the burden of proof in this matter and his claim for money owed or compensation is dismissed.

Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(c) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished. Therefore, the landlord application to keep the tenants security deposit is also dismissed.

As the landlord has been unsuccessful with his claim I find he must bear the cost of filing his own application.

With regard to the tenants claim for the return of double his security deposit; Section 38(1) of the Act says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the Act, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.



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Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on December 06, 2009. As a result, the landlord had until December 21, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or file an application to keep it within the allowable 15 days. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$550.00** plus accrued interest of **\$0.95** on the original amount pursuant to section 38(6)(b) of the *Act*.

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 **\$550.95**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed in its entirety 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: September 09, 2010.

Dispute Resolution Officer