

DECISION

Dispute Codes MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a monetary order.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to a monetary order for alleged damages.

Background and Evidence

This tenancy ended on July 31, 2010, when the Tenant vacated the rental unit.

The Landlord is seeking a monetary order in the amount of \$1,628.32 for damages to the rental unit allegedly caused by the Tenant during the tenancy.

The Agent for the Landlord submitted evidence and gave testimony of the alleged damages via an invoice for work done on the rental unit after the tenancy ended. I note that some work claimed for appears to be a Landlord's responsibility, such as repairing a leaking faucet, repairing damage to a tub, plumbing, etc. I further note that the invoice submitted by the Landlord incorporated work for other rental units and it was not clear from my reading the delineation for the work done on the rental unit in question.

The Agent for the Landlord gave affirmed testimony that the additional evidence of the move in and move out condition inspection report submitted by the Landlord was not served on the Tenant, and although this is in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*, I accepted this evidence as it was necessary in arriving at a decision. I allowed affirmed testimony about the contents of the document.

When queried, the Agent for the Landlord could not confirm whether or not the move in condition inspection was completed in conformance with Section 23 of the Act as he was not the property manager at the time. This witness did not appear to testify.

The Agent for the Landlord further testified that he spoke to the Tenant the day before her tenancy ended about an inspection and informed her he could not do the inspection on the day her tenancy ended, but would be available the next week, three-four days later. The Agent for the Landlord testified that the Tenant and the Agent did not perform a move out inspection together.

I note that the Tenant did not date the original move in inspection report, did not sign the move out inspection report and that the document itself was incomplete with names, dates and spaces left blank. I further note that the tenancy end date on the document was incorrect, as the tenancy ended July 31, 2010.

The Tenant gave affirmed testimony that she was not offered an inspection opportunity when moving in, but was told to sign the document by the then property manager. The Tenant testified that she had cataracts and could not read at the time.

The Tenant testified that she was not given an opportunity for a move out inspection by the Landlord and she denied leaving any damage to the rental unit. She stated that she left the rental unit in better shape than when she moved in. The two witnesses affirmed this testimony as they helped clean the rental unit.

The Tenant testified that she never agreed for the Landlord to withhold her security deposit and that when she signed that portion of the incomplete inspection report, the spaces were blank. I note this portion of the document was undated.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

The Agent for the Landlord offered no proof of a proper move in condition inspection and I cannot tell from looking at the document that the Landlord complied with the Act at that time. Further, there is no evidence before me that the Landlord offered the tenant at least 2 specific opportunities to complete the condition inspection or otherwise conform with Section 35 of the Act. I make no finding of whether the right of the Landlord to claim against the deposit for damages is extinguished as that issue is not before me.

The obligation of the Landlord is to provide opportunities for a move in and move out condition inspection. With the discrepancies in the document in evidence and without it being properly completed in conformance with the Act, I find the Landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the Landlord has **not** proven a monetary claim for the alleged damages to the rental unit.

I dismiss the Landlord's Application without leave to reapply.

Conclusion

The Landlord's Application is dismissed.

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: October 05, 2010.

Dispute Resolution Officer