



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application 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.

A representative attended the conference call hearing on behalf of the landlords; no one appeared on behalf of the tenant.

At the outset of the hearing, the landlord's representative stated that the landlord's claim is for damages to the unit, site or property. The Application is amended accordingly.

All information provided by the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?
Are the landlords entitled to retain a portion of the security deposit in satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on December 1, 2004. Rent at the end of the tenancy was \$1,047.48 per month, payable in advance on the 1st day of each month, and there are no rental arrears. On November 8, 2004 the landlords collected a security deposit from the tenant in the amount of \$445.00.

The landlords' representative testified that the tenant is deceased. They were contacted by the police to get into the suite, and then were contacted by another gentleman who stated he was representing the deceased tenant. That gentleman met

with the landlords and paid the rent for the month of September, 2010 with a notice to end the tenancy effective September 30, 2010 at 1:00 p.m.

On September 19, 2010 the landlords put a note under the tenant's door requesting to meet with the gentleman on September 30, 2010 at 11:00 a.m. to conduct an inspection and return the security deposit. She further stated that the tenant's representative did not wish to communicate with the landlords except by email or some other written form. No one attended on September 30, 2010 at 11:00 a.m. so the landlords waited until 1:00 because the tenant's notice stated that the unit would be vacated by 1:00 p.m. Still no one attended so the landlord entered the unit at 1:00. Everything was moved out but not cleaned, and the keys to the rental unit were on the counter.

The landlords provided photographs of the unit that were taken after the tenant's belongings had been removed, as well as receipts for repairs. Also provided is a move-in condition inspection report that was completed in 2004. The landlord is claiming \$112.00 for cleaning, \$27.99 for replacing a light fixture that was missing, \$69.42 for door handles (although she is not sure what doors they are for), and \$40.31 to replace the bathroom door. The landlord's representative stated that \$168.28 of the security deposit, including interest payable, was sent to the tenant's representative with the Landlord's Application for Dispute Resolution and notice of hearing documents, and the landlords have retained \$299.72, being the \$50.00 filing fee for the cost of this application and \$249.72 for the cost of repairs.

Analysis

The *Residential Tenancy Act* states that the onus is on the landlord to provide the tenant with at least 2 opportunities to conduct a move-out condition inspection report. The regulations go into great detail about how that is to happen. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

- (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.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The *Act* also states that if the landlord fails to provide the tenant with at least 2 opportunities to conduct that inspection, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlords did not provide a second opportunity to conduct that inspection, and therefore, I must find that their right to claim against the security deposit for damages is extinguished, and I so find. However, the landlords' right to make a claim for damages is not barred by that legislation.

I have reviewed the move-in condition inspection report that was completed in 2004, and I find that the *Residential Tenancy Act* was not in effect at the outset of the tenancy, but was in effect at the end of the tenancy. The move-in condition inspection report shows that at the start of the tenancy the floors were clean and waxed, blinds and appliances were clean and no holes appeared on the walls. No other existing damages were noticed and the document is signed by the landlord and the tenant. The photographs provided at the end of the tenancy show that the oven had not been cleaned, a light fixture is missing, the unit requires painting, the bathroom door has begun to split or peel, no door handles appear on the closet doors and a screen on a window or door is ripped. As a result, I find that the tenant's estate is responsible for cleaning the unit, and I find that the bill for \$112.00 is reasonable in the circumstances. I also find that the landlords' claim for \$27.99 for a light fixture has been proven; the move-in condition inspection report does not indicate that any were missing at the time the tenant moved in. With respect to the landlords' claim for door handles, I find that the landlords have failed to establish that part of the claim. I accept that there are no door handles on the closet doors, but I do not accept that the small holes for door handles in those doors would cost \$69.42. Further, the landlords' representative was unable to convince me what door handles were in need of replacing at the end of the tenancy. With respect to the landlord's claim for \$40.31 to replace the bathroom door, I have viewed the photographs and I find that the door is very old. It also appears to have split or peeled at the bottom as well as the top, requires refinishing in any event, and appears to be normal wear and tear due to the age of the door and the length of the tenancy.

In the circumstances, I find that the landlords have established a claim for \$139.99 in damages. The landlord is also entitled to recover the \$50.00 filing fee for the cost of this application. I further find that interest payable on the security deposit from November 8, 2004 to October 8, 2010 is a total of \$15.76. The landlords have returned

\$168.28 to the tenant's representative and I further find that the landlords have retained the total sum of \$102.49 that should be returned to the tenant's representative.

Description	Debit	Credit	Balance
Security Deposit	\$445.00		\$445.00
Interest	\$15.76		\$460.76
Cleaning Charge		\$112.00	\$348.76
Light Fixture		\$27.99	\$320.77
Filing Fee		\$50.00	\$270.77
Returned		\$168.28	\$102.49

Conclusion

For the reasons set out above, I order that the amount due to the landlords in the total sum of \$189.99 be set off from the amount due to the tenant's estate, and I permit the landlords to retain that amount from the portion of the security deposit currently held in trust.

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: February 07, 2011.

Residential Tenancy Branch