



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for double their \$725.00 security deposit for a total of \$1450.00. The tenants are also requesting recovery of their \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$416.37, a request to retain a portion of the security deposit towards the claim, and a request for recovery of their \$50.00 filing fee.

Tenants application

Background and Evidence

Facts not in dispute

- This tenancy ended on September 30, 2010, and a forwarding address in writing was received by October 17, 2010.
- No move-in inspection report or move- out inspection report was produced by the landlord.

The tenants stated that:

- The landlords did not do the required moving-in and move-out inspection reports and therefore did not have the right to file a claim against the security deposit.
- The landlord returned a portion of their security deposit however they do not accept it and therefore they voided the cheque.

The tenants are therefore requesting an order that the landlord pay double the security deposit plus their filing fee.

The landlord stated that:

- He did not do the required move in inspection report; however he did attempt to get the tenant to do a move-out inspection however the tenants did not cooperate.

Analysis

Section 23 & 24(2) of the Residential Tenancy Act state:

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

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

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

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*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case the landlord has admitted that he did not do the required to move-in condition inspection report, and therefore the landlord's right to claim against the security deposit for damages has been extinguished.

Sections 38(1) & 38(6) of the Residential Tenancy Act state:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Since the landlord's right to claim against the security deposit was extinguished, the landlords should have returned the security deposit, in full, to the tenants within 15 days of receiving the forwarding address in writing.

Since the landlords did not return the security deposit within the 15 day time limit, the landlords must pay the tenant double the amount of the security deposit.

The tenants paid a deposit of \$725.00, and therefore the landlords must pay \$1450.00.

I also order recovery of the \$50.00 filing fee.

I have therefore allowed the tenants full claim of \$1500.00.

Landlords application

Background and evidence

The landlord stated that:

- When the tenants vacated the rental unit they left the carpet in the rental unit badly stained and dirty and as a result the carpet had to be cleaned.
- The tenants also left the walls in the rental unit badly marked up and gouged and with numerous nails left in the walls. As a result he had to spend two days repairing and repainting the walls.
- The tenants also left a Gas bill outstanding.

The landlord is therefore requesting an order as follows:

Carpet cleaning	\$89.60
Outstanding gas bill	\$46.77
Filing fee	\$50.00
Total	\$466.37

The tenants stated that:

- They do not dispute that the carpets needed cleaning and had originally agreed to pay for carpet cleaning however they subsequently withdrew their offer to pay for carpet cleaning.
- They do dispute the claim for repairs and repainting, as they left the rental unit in as good condition at the end of the tenancy as they received it at the beginning of the tenancy.

- They paid the outstanding gas bill, and the landlord has even signed a receipt for the gas bill that shows that the \$46.77 was paid for by cheque on September 22.

Analysis

It is my decision that the landlord has shown that the carpets in the rental unit were in need of cleaning and therefore I allow that portion of the claim.

It is also my finding that the tenants did leave the rental unit in need of substantial repairs. The photo evidence provided by the landlord shows that there were numerous holes and gouges in the walls of the rental unit, and I do not accept the tenants claim that they left the rental unit in as good condition as they received it.

I therefore allow the landlords claim for repairs, painting, etc..

I deny the claim for the gas bill, because the tenants have supplied evidence that shows that that bill has already been paid.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Carpet cleaning	\$89.60
Filing fee	\$50.00
Total	\$419.60

Conclusion

I have allowed the tenants full claim of \$1500.00.

I have allowed \$419.60 of the landlords claim.

I therefore set off the amount allowed in the landlords claim against the amount allowed in the tenants claim, and have issued an order for the landlord to pay the difference of \$1080.40 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: March 02, 2011.

Residential Tenancy Branch