



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the landlord to keep the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenants on November 07, 2010. The tenants confirmed receipt of these documents.

Both parties 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:

Issue(s) to be Decided

- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on July 01, 2010. The tenants paid a monthly rent of \$975.00 which was due on the 1st of each month. The tenants paid a security deposit of \$487.50 on June 14, 2010. The tenants moved from the rental unit and gave

the landlord their forwarding address on October 17, 2010. The landlord did not conduct a move in or move out condition inspection of the rental unit at the start or end of the tenancy.

The landlords' agent testifies that the tenants did not clean the unit at the end of the tenancy and removed some racks and some the curtains and rods from the rental unit. The landlord testifies that she was unaware that she had to complete the move in or move out condition inspections. The landlord seeks an Order to keep part of the tenant's security deposit to recover her cleaning costs of \$201.60 and \$220.00 for the cost of the racks, curtains and rods.

The tenant's testify that they did leave the rental unit in a clean condition at the end of the tenancy and did not remove items belonging to the landlord. The tenant's testify that the landlord received their forwarding address and had fifteen days to return their security deposit or file an application to keep it. The tenants state the landlord filed her application after the fifteen days. They seek the return of double their security deposit.

Analysis

Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenants have disputed the landlords' evidence that they did not clean the rental unit and removed items from the rental unit that belonged to the landlord. The tenant's testify that the landlord did not return their deposit nor did she file her application to keep it within 15 days.

It is my decision that the landlord has extinguished her right to keep the security deposit pursuant to s. 24(2)(a) and s. 36(2)(a) of the Act. Consequently, her application is dismissed. I further find as the landlord has been unsuccessful with her claim she must bear the cost of filing her own application.

The tenants have requested the return of double their security deposit, however as this is the landlords' application I am not permitted to Order the landlord to return double the security deposit. However, I do Order the landlord to return the security deposit of **\$487.50** to the tenants pursuant to s. 38 of the Act. A Monetary Order has been issued to the tenants for this amount.

Conclusion

I HEREBY DISMISS the landlords claim to keep all or part of the tenant's security deposit and ORDER the landlord to return the security deposit of **\$487.50** 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 09, 2011.

Residential Tenancy Branch