



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, O

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 is a request for a monetary order for \$625.00, and a request to retain the full security deposit of \$625.00 towards the claim.

Background and Evidence

The parties agree on the following facts:

- This tenancy began March 1, 2010 and ended February 28, 2011 and a security deposit of \$625.00 was paid prior to the beginning of the tenancy.
- No move in inspection report or move out inspection report was completed for this tenancy.
- The landlord received a forwarding address in writing by March 8, 2011.

The landlord testified that:

- The garbage can lid was missing at the end of the tenancy and as a result he had to replace the garbage can at a cost of \$55.00.
- The tenants left the rental unit quite dirty and as a result his wife had to spend eight hours cleaning and therefore they are asking for \$25 an hour for a total of \$200.00.
- The tenant's damaged two screens in the rental unit and it took three hours of his time to replace those screens at \$30 an hour, for a total of \$90.00.
- The tenants left an oil slick on the driveway that he could not get entirely clean however he spent an hour attempting to clean the oil slick at \$30 an hour for a total of \$30.00.
- The tenant broke the glass cover on the garage door opener and he spent two hours running around to find a replacement and therefore is asking for two hours times \$30 for a total of \$60.00.
- When the tenants vacated there was a round bare patch on the back lawn and he paid a landscaper \$100.00 to attempt to repair the patch and plant new seed.
- The bare patch on the lawn remained when the new tenants moved in even after frequent watering and therefore he gave the new tenants a \$100.00 deduction from the rent to take care of repairing the lawn.
- When the tenant moved out there were some pots frozen into the ground that the tenant did not remove and therefore he is asking for one hour at \$30 an hour for his time to remove those pots.
- The tenant lost the garage door opener and replaced it with a new one however he did not supply a battery and therefore he had to purchase a battery a cost of \$10.00, and he spent an hour or more of his time to re-program the garage door opener at \$30 an hour.
- He has also had to pay a \$50.00 filing fee to apply for dispute resolution.

Therefore since the total amount of his costs exceeds the amount of the security deposit, he is requesting an order allowing him to keep the full security deposit of \$625.00.

The tenants testified that:

- They do not dispute the claim for the garbage can, as the lid did go missing during the tenancy.
- They do dispute the claim for cleaning as they left the rental unit in very clean condition as is shown in the photos they have supplied as evidence. The only place they did not clean was under the fridge however the fridge was not on rollers and they did not want to move the fridge for fear of damaging the floor.
- They only damaged to one screen in the rental unit not two, however the landlord agreed to exchange a microwave oven and some blinds that they left behind in exchange for the cost of repairing that screen.
- They did leave an oil slick on the driveway as their van had leaked.
- He did accidentally break the glass cover on the garage door opener.
- They had had a swimming pool on the lawn, and it did kill the grass however there is absolutely no reason why a little bit of seed spread over that dead patch would not re-grow the lawn.
- They did leave some flowerpots in the yard when they moved out however they were frozen solid into the ground and they could not remove them. The landlord did not express any concern over the pots and had he done so they would have returned to remove them, when the ground thawed.
- He did lose the garage door opener and replaced it with a brand-new one and was not aware that there was not a battery supplied with the new garage door opener.

They are therefore willing to allow the landlord to keep \$200.00 of their security deposit to cover damages that they did cause however they believe that the remainder should be returned and that the original deposit should be doubled because the landlord did not comply with the requirements of the Residential Tenancy Act.

Analysis

First of all I will deal with the amount of the security deposit.

Sections 23 and 24 of the residential tenancy act are listed below:

Condition inspection: start of tenancy or new pet

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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(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 failed to do both the move in inspection report and the move out inspection report, and therefore the landlord's right to claim against the security deposit for damages has been extinguished.

Therefore since the landlords right to claim against the security deposit had been extinguished, he did not have the right to file a claim against the deposit, and he was required to return the security deposit within 15 days of the end of the tenancy or the date he got a forwarding address in writing whichever is later, and if he fails to do so he is required under Section 38(6) of the Act to return double the security deposit to the tenant.

Therefore in this case the landlord was required to pay \$1250.00 to the tenants, and any order issued will be deducted from that amount, and not from the original amount of \$625.00.

As far as the landlords claim is concerned is my decision that the landlord has only established a very small portion of his claim.

The landlord has supplied little evidence in support of his claim and has supplied no invoices or receipts for any of the costs claimed.

The tenants have admitted to some damage including losing the garbage can lid, damaging one window screen, causing an oil slick in the driveway, breaking the garage door opener glass cover, killing the grass with a swimming pool, and failing to provide a battery for the new garage door opener, and therefore I will allow a portion of landlords claim to cover the cost of these damages.

The tenants have offered \$200.00 to cover the cost of the damages that they caused and it is my decision that that is in a reasonable amount. I will not allow the full amount claimed by the landlord, because due to the lack of evidence supplied, the landlord has not met the burden of proving the amounts he is claiming.

Further the landlord claims that the rental unit was left in a dirty condition that required eight hours of cleaning however it is my finding that the rental unit was left in a reasonable state of cleanliness as required by the Act. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlord has not shown that the tenants failed to meet the "reasonable" standard of cleanliness required, and in fact the photo evidence supplied by the tenants shows that the rental unit was left quite clean.

It is also my finding that the amount of time the landlord claims to have spent on repairs is excessive. I find it highly unlikely that it would take three hours to repair two screens, and I find it unlikely that it would take a full hour to remove a few flowerpots from the yard.

Further since I have only allowed a small portion of the landlords claim I will not allow the request for recovery of the filing fee.

Conclusion

I have allowed \$200.00 of the landlords claim and therefore since the landlord was required to return double the security deposit to the tenant in the amount of \$1250.00, I have issued a monetary order for the return of \$1050.00 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: June 28, 2011.

Residential Tenancy Branch