



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, damage for loss or damage under the Act, regulations or tenancy agreement, to retain the security deposit, and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery on March 4, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceed with both parties in attendance.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there a loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for loss or damage and if so how much?
5. Is the Landlord entitled to retain the Tenant’s security deposit?

Background and Evidence

This tenancy started on November 1, 2009 as a month to month tenancy. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 in October, 2009. This tenancy ended on June 30, 2010.

The Landlord said she did not complete a move in or move out condition inspection report and she understands her claims for damage to the unit may not be successful without evidence to establish the condition of the unit at move in and move out.

The Landlord continued to say she is seeking \$3,506.17 in damage to the unit. The Landlord said the carpets were cleaned at a cost of \$110.00, blinds were replaced at a cost of \$241.92, a washing machine was replaced at a cost of \$334.881, she submitted a quote to replace the carpet for \$2,481.63 as the Landlord said the carpet could not be cleaned and she said they had their own labour expensed for the balance of her claim.

The Landlord continued to say she would fax in a copy of a witnesses' letter that would help establish the condition of the unit on move in.

The Tenant said the rental unit was reasonably clean when they moved out. The Tenant continued to say they submitted photographs and three letters from witnesses to establish the condition of the unit on move in and move out. The Tenant said the witnesses' letters indicate the carpet was stained when they moved in. The Tenant said the photographs show the unit was reasonably clean and the yard was mowed and weeded when they moved out. The Tenant said they believe they left the unit similar condition as when they moved in.

The Tenant continued to say they received a court order to have the Landlord repay their security deposit and they have received \$200.00 to date.

Analysis

Section 23, 24, 35 and 36 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said she did not do condition inspection reports at the start or at the end of the tenancy, I find that the Landlord has not established grounds to proof that the Tenant damaged the rental unit or the Tenant left rental unit in an unreasonable condition. Consequently, I dismiss the Landlord's application for damages to the unit, site or property and for loss or damage.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

As a result I order the Landlord to comply with the Court Order to return the security deposit to the Tenants. I dismiss the Landlord's application to retain the Tenant's security deposit.

As well, as the Landlord was not successful in this matter I dismiss his application to recover the filing fee for this proceeding of \$50.00 from the Tenant.

Conclusion

The Landlord's application is dismissed without leave to reapply.

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*.

Residential Tenancy Branch