



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, MNSD

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession where employment with the landlord has ended; and to keep all or part of the security deposit.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the landlord stated that the tenants moved out of the rental unit on March 1st, 2010. Therefore the landlord withdrew his application for an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The rental unit consists of a two bedroom condominium. Pursuant to a written agreement not produced as evidence, the tenancy started on August 26th, 2009 and ended March 1st, 2011. The rent was \$1395.00 per month and the tenant paid a security deposit of \$697.50, and a pet damage deposit of \$697.50.

In his documentary evidence, the landlord' agent provided in part 16 photographs of the unit, showing that the stove, top of the fridge, sink, dishwasher, and patio rails and floor were dirty. They also showed some staining of the master bedroom carpet, and that personal items were left behind above the water heater and in two cupboards.

The landlord' agent provided a copy of a signed condition inspection report, showing that a move-in inspection was conducted September 1st, 2009, and a move-out

inspection was conducted on March 1st, 2011. The move-out report showed that the landlord's agent held back \$275.00 for additional cleaning.

The landlord's agent testified that he was not employed by the landlord at the start of the tenancy, and that the move-in inspection was completed by A.B. He stated that during the move-out inspection, he identified two items that required further cleaning. He stated that he agreed to allow the tenant to come back to the unit to tend to these issues. He said that he returned later and found that there were still other areas that required cleaning, at which time he took the photographs which he provided in his evidence. He described the photographs and stated that the condition of the carpet was not satisfactory. He made a monetary claim of \$200.00 to clean the carpet, remove personal belongings, and additional for cleaning. The landlord's agent also claimed \$5.00 for light bulb replacement.

In her documentary evidence, the tenant provided in part 8 photographs to show that she cleaned the unit on move-out; however they were more panoramic in nature and did not depict the areas specifically identified by the landlord.

The tenant testified that she never dealt with A.B. at the start of the tenancy. She stated that the agent was a J.W. however he never completed a condition inspection report. She stated that as tenants they were aware that this was a temporary tenancy while the owners of the unit were away, and that they treated it as their own; she said that the personal items left behind were actually the owners' and were already there when they moved in. She said that they did not as much as put anything up on the walls, that they never used the patio, and that the condition of the stove and sink were pre-existing. She said that contractors had started to do work in the unit after they moved out, and that this would explain the carpet stains. She stated that they were not there during the move-out inspection, nor were they identified by the landlord's agent until the filing of this dispute. She conceded that she may have forgotten to clean the top of the fridge, and agreed that she forgot two bags of groceries when she left. She also stated that she sent a cheque in the mail to the landlord for the bulb replacement.

The landlord's agent did not rebut the tenant's evidence, and stated that she had been a good tenant.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss;

that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord. I find the landlord agent's testimony vague concerning these reports, in particular at move-in; he first stated that A.B. completed it; then conceded that it could have been J.W, and then stated that he inadvertently signed the report on move-in. He then agreed that the issues that he identified in his application for dispute resolution should have been recorded at the time that he conducted the move-out inspection with the tenant.

The photographs were not taken during the move-out inspection and therefore they do not persuade me that the issues, albeit minimal, were caused by the tenant.

I do not find the condition inspection reports credible; the landlord's agent did not provide sufficient evidence to support, on a balance of probabilities, that the damage or loss claimed by the landlord's agent resulted in damage or loss beyond reasonable wear and tear.

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. The tenant agreed that she left two grocery bags behind, and that she may have forgotten to clean the top of the fridge; for this I award the landlord a nominal compensation of \$25.00.

Conclusion

The landlord established a claim of \$25.00. I order the landlord to deduct this amount from the amount held back from the tenant's security deposit, and to return the outstanding balance to the tenant forthwith. If the landlord fails to comply, the tenant is at liberty to make an application for dispute resolution.

The landlord did not apply for recovery of the filing fee, therefore I decline to make an order in that respect.

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 23, 2011.

Residential Tenancy Branch