



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the female tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on September 10, 2010 for a month to month tenancy beginning on October 1, 2010 for a monthly rent of \$750.00 due on the 1st of the month with a security deposit of \$375.00 paid on September 2, 2010.

The parties agree the tenants vacated the rental unit no later than February 28, 2011 after the tenants had provided the landlord with a 2 week notice to end the tenancy but that a move out inspection was not completed. The parties provided a copy of a move in inspection completed at the start of the tenancy.

The tenant testified that the male tenant had been sending text messages to the landlord's agent to arrange a time to complete the move out inspection but that they just never met. The tenant states the male tenant informed the landlord's agent of when they would be at the unit and when they planned to leave (via text messaging).

The landlord's agent testified that she had text messaged the tenants asking when they would be available to complete an inspection but that they responded back that they at already moved out of the local area.

The landlord seeks compensation for \$45.00 for 3 hours of cleaning at \$10.00 per hour; \$150.00 for carpet cleaning; \$50.00 for rekeying of the mail box as only one of two keys

was returned; and no amount given for removing a table and chair and washing machine from the basement. The total outlined by the landlord is \$245.00 and the landlord seeks to retain the security deposit of \$375.00 to offset these costs.

The landlord provided no evidence of the condition of the rental unit at the end of the tenancy but referred to the tenants' photographs of the rental unit. The landlord pointed out in one photograph of the bathroom that although the toilet lid was closed in the photograph it was not clean when they lifted the lid.

In another photograph taken by the tenant and referred to by the landlord it shows a table and chairs in the basement that the landlord states was left behind. The tenant testified that these were removed by the tenant's mother after the photograph was taken and not left when the vacated the rental unit.

Analysis

Section 35(1) of the *Act* requires a landlord and tenant to complete a condition inspection on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day.

Section 35(2) goes on to say that the landlord must offer at least 2 opportunities for the inspection and that the landlord must complete a condition inspection report. Section 17 of the Residential Tenancy Regulation stipulates that if the tenant is not available at a time offered by the landlord the landlord must propose a second opportunity by providing the notice in the approved form, available on the Residential Tenancy Branch website.

Section 35(5) of the *Act* states the landlord may make the inspection and complete and sign the condition inspection report without the tenant if the landlord has complied with Section 35(2) and the tenant has not participated or the tenant has abandoned the unit.

While the tenants did give the landlord a notice to end tenancy that was not compliant with Section 45 of the *Act*, I find the landlord was aware the tenants were vacating the rental unit and as such could not have considered the unit abandoned.

As such to be compliant with the *Act* and the Regulation the landlord would have had to issue the tenants with a formal written notice of an opportunity to complete a move out inspection. As the landlord failed to provide any testimony or evidence that a notice for a second opportunity was given in the approved form, I find the landlord did not comply with Section 35(2) of the *Act* and Section 17 of the Regulation.

Section 36 of the *Act* outlines that if a landlord fails to comply with Section 35(2), the right of the landlord to claim against a security deposit for damage to residential property is extinguished. Based on the above finding I further find the landlord has extinguished that right.

In addition, the landlord has provided no documentary record of the condition of the rental unit at the end of the tenancy and based on the photographic evidence submitted by the tenant I find the unit was left in a reasonably clean and undamaged condition at the end of the tenancy.

Conclusion

Based on the above, I dismiss the landlord's application in its entirety. I find the tenants are entitled to the return of the security deposit and I grant a monetary order to the tenants in the amount of \$375.00.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 30, 2011.

Residential Tenancy Branch