



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application to keep the security and pet damage deposits; and to recover the filing fee associated with his application.

By the tenants: as an application for the return of part of the damage and pet security deposits; for the landlord to comply with the Act, Regulation, or tenancy agreement; and to recover the filing fee associated with this application.

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.

Issue(s) to be Decided

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

Is the landlord entitled to recover the filing fee?

Are the tenants entitled to the return of any the security and pet damage deposits?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a townhouse. Pursuant to a written agreement, the fixed term tenancy started on July 1st, 2010 and was to end June 30th, 2011. The rent was \$1500.00 per month. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. Condition inspection reports were completed at the start and the end of the tenancy.

In his documentary evidence, the landlord provided a CD video of a walk-through which the landlord said was conducted on or about May 2nd, 2011, and 34 photographs in support of his claim for damage to the walls. These exhibits showed in part paint brush strokes throughout the walls of the unit and a badly burnt patch of grass in the backyard. At the hearing the landlord clarified that the nature of his claim was for the yard damage caused by the tenants' dog, and the unit walls having to be repainted throughout the rental unit.

The landlord testified that the unit was clean and without issues at the start of the tenancy. He stated that dogs are not allowed and that the tenants hid that they had one. He said that the tenants' dog burnt the grass in the backyard, and the landlord produced a landscaping invoice of \$112.00 for these repairs. The landlord said that he did not authorize the tenants to paint the walls; he said that he only allowed the tenants to paint the kid's bedroom, but that all the walls had been touched up with the wrong paint. The landlord provided a quote to repaint the entire unit for \$2800.00, and stated that so far he has done part of the work himself at a cost of \$300.00. The landlord said that he ended the fixed term tenancy prematurely by issuing the tenants a 2 Month Notice to End Tenancy to take effect on April 30th, 2011, and that he gave the tenant's one month's free rent.

In their documentary evidence, the tenants provided a CD video of a walk-through conducted on April 28th, 2011, and 38 photographs of the unit. These exhibits showed in part the same brush strokes on the walls that were captured in the landlord's video.

Tenant J.T. did not dispute the lawn damage. He testified that a move-out inspection report was completed and signed on April 28th with the landlord, and that they had agreed to deduct \$100.00 from the security deposit for additional cleaning with a power washer. The tenant said he has not received a copy of that report. He said that he used the landlord's leftover paint only to touch up areas where pictures were hanging, that he painted the "purple room", and that everything else concerning this claim is reasonable wear and tear. Concerning the wide brush strokes captured on video, J.T. and H.T. speculated that they may have been caused by a wide mop that they used to clean the walls.

The landlord stated that he had two copies of the move-out inspection report, and that after the inspection was completed on April 28th he gave one copy to the 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, and particularly when the parties' testimonies are at odds, 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 for damages against the tenants.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord. The tenants provided the report completed at the start of the tenancy; the landlord's claim was not supported by this report, nor the one which he claims was completed at the end of the tenancy. Section 7(2) of the Act further states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The landlord in this matter has provided a quote, and stated that the actual cost to date was \$300.00.

I find that there is insufficient evidence to prove the landlord's claim that all the walls have to be repainted, and to prove that repainting the whole unit is an objective reflection on the landlord's statutory obligation to mitigate his loss. The landlord did not present any steps taken to reduce that loss and the repairs have not been completed yet. The landlord only provided one quote and as such I am unable to ascribe a definite cost to this aspect of the claim. The parties' CD showed brush marks on several walls, which the tenants attribute to using a wide mop. These marks were not identified in the move-in condition inspection report. In that respect I find that there was damage beyond reasonable wear and tear and in the absence of more substantive evidence I grant the landlord nominal compensation of \$500.00.

The tenants did not dispute the damaged lawn; the landlord provided a receipt of \$122.00 for that repair and therefore I award the landlord full recovery for that loss.

Conclusion

The landlord established a claim of \$622.00. The tenants previously agreed that the landlord could keep \$100.00 for power washing for a balance of \$1400.00 retained against the security and pet damage deposits. Therefore the tenants are entitled to the return of their combined deposits for the balance of \$778.00.

Since the parties were partially successful, I decline to make an order regarding the filing fees.

Pursuant to Section 67 of the Act, I grant the tenants a monetary order for the sum of \$778.00.

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: August 24, 2011.

Residential Tenancy Branch