



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a Monetary Order for damage to the unit, and to keep all or part of the security and pet damage deposit and to recover the filing fee.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in documentary form and to make submissions to me.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

Although no written tenancy agreement was entered into evidence, I heard testimony that this tenancy began April 1, 2009, ended on April 30, 2011, monthly rent was \$1,400.00, and a security deposit of \$675.00 was paid by the tenants at the beginning of the tenancy.

The landlords' claim is \$974.40, which includes \$168.00 for a locksmith charge to change the locks, \$78.40 for duplicate keys and \$728.00 for kitchen floor repair.

In support of her application, the landlords submitted receipts for each of the items listed in their claim.

The landlord stated that the tenants moved out on April 30, 2011, at approximately 8:30 p.m., and would not return the keys to the rental unit.

The landlord submitted that the tenants threatened her when she refused to return their security deposit on the night they moved, and as she is 77 years old, she feared for her

safety. This resulted in having to call a locksmith late that night, nearly midnight, as the rental unit is the basement suite of her home and she feared having unlocked premises.

The landlord testified that the tenants damaged the kitchen floor, which required repairing.

The landlord acknowledged that there is no move in or move out condition inspection report, and I note that the landlord did not submit any photographic evidence.

In response, the tenant confirmed that they did not return the keys the night they moved as the landlord did not return their security deposit, but did return on May 1, 2011, to return the keys.

The tenants submit that they were entitled to keep the keys the night of the move, April 30, 2011, as they had paid rent for April.

Upon query, the tenant stated that they moved out at 7:00 p.m.

The tenant stated that the kitchen floor was very old and that there was no damage left, other than reasonable wear and tear.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlords to prove damage or loss.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a move in or move out condition inspection report, I find the landlords have not sufficiently proven the condition of the rental unit before the tenancy began or after it ended and thereby are unable to meet steps 1 and 2 of their burden of proof.

Alternatively, had the landlord supplied a move in or out condition inspection report, I would still dismiss the landlord's claim for failure to prove that the tenants damaged the rental unit. The landlord did not submit any proof that the tenants damaged the rental unit, such as with photos or independent verification, or that the rental unit kitchen flooring required repairing.

I therefore **dismiss** the landlords' monetary claim for \$728.00 for repairing the kitchen floor.

As to the landlords' claim for a locksmith charge and making duplicate keys, the tenants claim that they were entitled to retain the keys until the day after moving, May 1, 2011, and failed to return the keys on the move out date.

Section 37 of the Act states the tenants must vacate the rental unit by 1:00 p.m. on the day the tenancy ends. As this tenancy ended on April 30, 2011, the tenants were not entitled to keep the keys until the day after the move, May 1, 2011.

As the landlords were partially successful, I grant them a portion of their security deposit in the amount of \$25.00.

Due to the tenants' violation of Section 37, I find the landlords have established a **monetary claim** in the amount of **\$271.40**, comprised of \$168.00 for a locksmith charge to change the locks, \$78.40 for duplicate keys and \$25.00 for a partial filing fee.

I allow the landlords to retain **\$271.40** from the tenants' security deposit of \$675.00 in satisfaction of the claim and I **direct** that the landlords to return to the tenants the balance of the security deposit in the amount of \$403.60.

I **grant** the tenants a monetary order in the amount of **\$403.60**, under authority of Section 67 of the Act

I am enclosing a monetary order for **\$403.60** with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

Conclusion

The landlords have established a monetary claim of \$271.40, and may deduct this amount from the tenants' security deposit in satisfaction of the claim.

The tenants are granted a monetary order in the amount of \$403.60, representing the balance of their security deposit.

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 23, 2011.

Residential Tenancy Branch