



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1470.00 and a request for recovery of the \$50.00 filing fee.

Background and Evidence

First of all I dealt with the applicants claim for damage to personal belongings.

The applicants provided no evidence in support of the claim for damage to personal belongings, and therefore this portion of the claim was dismissed for lack of evidence.

Damage deposit

The applicant testified that:

- The landlord did not have the right to claim against the security deposit for damages, because no move in inspection report or move out inspection report was done.
- They did not give the landlord any permission to keep any of the security deposit.
- The landlord only returned \$40.00 of the security deposit.

The applicants are therefore requesting an order for return of double the security deposit, less the \$40 that was returned.

The respondent testified that:

- He did not do the required move in inspection report or move out inspection report, as he believed that all parties were in agreement as to the condition of the rental unit.
- He did not know that by failing to do the report he was extinguishing his right to claim against the security deposit for damages.

Compensation for water clean up

The applicant testified that:

- They had had some minor water seepage in the rental unit that they had been able to soak up with towels however there was no indication that a large intrusion of water may occur.
- January 16, 2011 they woke up to a flooded basement with approximately 1" to 1-1/2" of water.
- They spent at least 11 hours of their time cleaning up water to try and resolve the problem however eventually they had to vacate the rental unit.

The applicants are therefore requesting an order that the landlord pay them \$20.00 per hour for a total of \$220.00 for their time spent cleaning up water.

The respondent testified that:

- There had been some water seepage into the rental unit however he too had no idea the large intrusion of water may occur.
- When the flood did occur he dealt with it as best he could, considering that he was recovering from to serious injuries.
- He also does not believe that there was 1 1/2 inches of water in the rental unit, as there was no damage to the drywall and had there been that much water in the rental unit the drywall would certainly have shown water damage.
- He does not believe that the tenants spent anywhere near 11 hours cleaning up water.

The respondent therefore believes that the claim for cleaning up water is not justified.

Analysis

Security deposit

If the landlord fails to do the required move in inspection report or move out inspection report the landlords right to claim against the security deposit for damages is extinguished, and therefore the landlord should have returned the security deposit to the tenants.

The landlord has not returned the tenants security deposit and the time limit in which to apply is now past.

The Residential Tenancy Act states that, if the landlord does not return the security deposit within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

This tenancy ended on January 18, 2011 and the landlord had a forwarding address in writing at least by the date on which the original hearing was scheduled, June 6, 2011,

and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenants.

The tenants paid a deposit of \$450.00, and therefore the landlord must pay \$900.00 less the \$40.00 that was already returned, for a total of \$860.00.

I also order recovery of the \$50.00 filing fee.

I deny the claim for time spent cleaning up water, because first of all, the applicants have not supplied sufficient evidence to prove that they spent 11 hours cleaning up water, and secondly I am not convinced that there was any negligence on the part of the landlord. Even the tenant admitted they had no way of predicting that such a large influx of water would occur.

Conclusion

I have allowed \$910.00 of the claim and have therefore issued a monetary order against the landlord for that amount.

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 08, 2011.

Residential Tenancy Branch