



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD

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 \$1410.00, recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards the claim.

Background and Evidence

This tenancy began on January 1, 2011 and ended on June 30, 2011.

Both parties agreed that a move in inspection report was done and a copy was given to the tenant, however neither side has supplied a copy to this hearing.

Both sides also testified that a move out inspection report was done however the tenant denies ever receiving a copy of that report. The landlord was very vague on the issue but stated that he believes a copy was given to the tenants on July the 28th.

As with the move in inspection report, no copy of the move out inspection report has been supplied to this hearing.

The landlord testified that:

- The tenants were supposed to move out of the rental unit on June 30, 2011 and they had arranged to have cleaners come in on that date; however the tenants did not finish moving out until July 1, 2011 and as a result they had extra cleaning costs because the cleaners had to clean around the tenants as they were moving and then had to come back the next day to finish the job.
- The tenants also left a large amount of garbage behind when they vacated the rental unit and as a result they had to have that garbage hauled away.
- The tenants left the carpet in the rental unit stained and with a large amount of soap left in it and as a result they had to have the carpet professionally cleaned to remove the stain and the soap.
- The tenants left the porch at the rental unit very dirty and stained with beer stains and as a result they had to have the porch power washed.
- The tenants also failed to maintain the garden at the rental unit which was part of their responsibility and as a result they had to have the gardening done after the tenants moved out.
- At the end of the tenancy there were also numerous fireplace tools either damaged or missing.

The applicants are therefore requesting an order as follows

Cleaning	\$681.24
Garbage removal	\$237.20
Carpet cleaning	\$134.40
Power wash porches	\$150.53
Cutting grass and weeding	\$125.00
Fireplace tools (estimate)	\$100.00
Filing fee	\$50.00
Total	\$1478.37

The applicant further requests an order to keep the full security deposit of \$1450.00 towards the claim and that a monetary order be issued in the amount of \$28.37.

The tenants testified that:

- They were going to arrange to have the cleaning of the rental unit done themselves however the landlord offered to have it done at a cost of \$200.00. They therefore agreed to let the landlord have the cleaning done however they would never have agreed had they been told the actual costs would be \$681.00.
- The landlords also cleaned the rental unit to a higher standard than what it was when they moved in and they believe that this extra cost of cleaning is partially to upgrade the rental unit for the new tenants.

- A lot of the stuff that the landlord is claiming for garbage removal did not even belong to them, it was garbage from the other tenants below them in the rental property. As well some of the items in the photographs that the landlord has provided as evidence were actually removed at a later date and were not left behind for the landlord to remove.
- We believe we left the carpets in good condition when we moved out of the rental unit and they were certainly in as good condition as when we moved in. We do not recall any stains.
- They saw the cleaning people cleaning the porches and therefore do not understand why the landlord had to have them cleaned again with a power washer. These porches were not in the very good condition when they moved into the rental unit and again they think the landlord has just taking this opportunity to upgrade the rental unit at their expense.
- I offered to cut the lawn on the day it was moving out however the landlord refused my offer and now he wants me to pay for cutting the lawn and I do not believe this is reasonable.
- The fireplace tools were not in good condition at the beginning of the tenancy, and they left them in the same condition at the end of the tenancy.

Analysis

Both sides agree the move in inspection report was done at the beginning of the tenancy however since neither the landlords nor the tenants have supplied a copy of that move in inspection report it is of no value to this hearing. Therefore it is basically the landlord's word against that of the tenants.

Secondly it is my finding that the landlords did not comply with the requirement to provide the tenant with a copy of the move out inspection report within the 15 day time limit set out in the residential tenancy regulations.

Section 36(2)(c) of the Residential Tenancy Act states:

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The tenant claims that he never received a copy of the move out inspection report, and the landlord testified that he thinks the tenant was given a copy on July 28, 2011; however even if the landlord did give the tenants a copy on July 28, 2011 that is outside the 15 day time limit required in need Residential Tenancy Regulations.

Therefore it is my decision that the landlord did not have the right to claim against the security deposit for damages and therefore should have returned the deposit to the tenant within 15 days of the end of the tenancy, and since the landlord did not do so the landlord is required to pay double the deposit to the tenants, for a total of \$2900.00.

Cleaning

It is my decision that I will only allow the \$200.00 that the tenants had agreed to when the landlord inform them they would take care of the cleaning for that price. The landlord claims that there was extra cleaning required due to the fact that the tenants had not vacated however the landlord has provided little evidence of the need for extra cleaning and it is basically just his word against that of the tenants.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Garbage removal

it is my decision that I will allow the full amount claimed for garbage removal, because it's obvious from the photo evidence provided that a substantial amount of garbage was left behind. The tenants claim that they came back and removed some of that garbage however they are provided no evidence in support of that claim. The tenants of also claimed that some of that garbage was not theirs however I find it unlikely that the garbage belonged to the other tenants in the rental property.

Carpet cleaning

I also allow the landlords claim for carpet cleaning. The tenants claim that they left the carpets reasonably clean however the photo evidence clearly shows that the carpet is stained and in need of cleaning.

Porch cleaning

I deny the claim for porch cleaning because again it is basically just the landlord's word against that of the tenants, as the tenants claim they left the porch as clean as they had received it at the beginning of a tenancy. Therefore again the landlord is not met the burden of proving this portion of the claim.

Gardening

I also deny the claim for gardening, because the landlord admitted that the tenant had offered to mow lawns and the landlord turned him down. Had the landlord accept that the tenants offer to mow lawns this is a cost that the landlord may not have had.

Fireplace tools

Again there is no evidence to support this claim and since the tenants denied damaging or taking any of the fireplace tools the landlord has not met the burden of proving this portion of the claim.

Therefore the total amount of the claim that I have allowed is as follows:

Cleaning	\$200.00
Garbage removal	\$237.20
Carpet cleaning	\$134.40
Filing fee	\$50.00
Total	\$621.60

Conclusion

I have allowed \$621.60 of the landlords claim, and I therefore set off that amount against the \$2900.00 double security deposit that the landlord is required to pay to the tenants. I have therefore issued an order for the landlords to pay \$2278.40 to the tenant.

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: October 11, 2011.

Residential Tenancy Branch