



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF, 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 decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenants application is a request for a monetary order for \$1400.00 and recovery of the \$50.00 filing fee.

The landlords application is a request for a monetary order for \$4840.81

Tenants application

Background and Evidence

This tenancy ended on April 30, 2011 and the landlord testified that she had a forwarding address in writing by March 24, 2011.

The tenant has not given the landlord any written permission to keep any of the security deposit.

To date the landlord has not returned any of the security deposit.

Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution 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.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on April 30, 2011 and the landlord had a forwarding address in writing by March 24, 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 tenant.

The tenant stated deposit of \$700.00, and therefore the landlord must pay \$1400.00 plus interest of \$24.80, for a total of \$1428.80.

I also allow the tenants request for recovery of the \$50.00 filing fee.

Landlords application

Background and Evidence

The landlord testified that:

- The tenants made some alterations to the rental unit that were not authorized and as a result at the end of the tenancy the unauthorized alterations had to be removed and hauled to the dump.
- The tenants also left the carpets in the rental unit in very poor condition and as a result they had to be removed and hauled to the dump.
- The tenants left damage to the walls of the rental unit, mainly a hole in the wall from a doorknob, but also other scratching and as a result the walls needed to be repaired and repainted.
- The tenants left a door and doorframe in the rental unit damaged and they had to be replaced.
- The tenants it also removed the garage door during the tenancy however when they replaced it at the end of the tenancy they did not replace all the trim and as a result they had costs to replace that trim.
- When they remove the carpets they found the hardwood floors underneath had been badly stained and as a result they had to re-finish all the hardwood floors in the rental unit. They are therefore asking that the tenants pay for a portion of the refinishing of the hardwood floors.
- They had been asking for the cost of removing a pond that the tenants had put in the backyard without any authorization to do so, however they never incurred that cost as the pond was not removed before the sale of the rental unit.

- They had also been asking for replacement of the linoleum in the laundry room however they never incurred that costs either as it was not replaced before the sale of the rental unit.
- They had also been asking for the replacement cost of the carpets, however again they never incurred this costs as well, and as the carpets were not replaced prior to the sale of the unit.

The applicants are therefore requesting an order as follows:

Garbage removal	\$200.00
Remove carpet	\$175.00
Dump fee	\$20.00
Repairs to walls	\$350.00
Painting	\$300.00
Garage door repair	\$50.00
Removal of closet construction	\$50.00
Refinish hardwood floors	\$350.00
Pond removal estimate	\$700.00
Linoleum replacement estimate	\$456.71
Carpet replacement estimate	\$1764.10
Door replacement	\$125.00
Doorframe replacement and labour	\$250.00
Filing fee	\$50.00
Total	\$4840.81

The respondent testified that:

- They caused absolutely no damage to the rental unit and almost all the damages claimed by the landlord existed when they moved into the rental unit.
- The tenants that lived in the rental unit prior to them were a group of teenagers who use the rental unit as a party house and left it in very poor condition.

- The landlord had replaced the carpet when they moved into the rental unit because of the major staining to the existing carpet which is likely what resulted in the stains to the hardwood floor underneath.
- When they vacated the rental unit there was nothing wrong with the carpets in the rental unit and no reason for the landlord to of replace them.
- The damage to the walls existed when they moved into the rental unit and were never repaired by the landlord during the full term of the tenancy.
- The damage to the door and doorframe existed when they moved into the rental unit and again were not repaired by the landlord.
- The landlord has not removed the pond, repaired the linoleum, or replaced any carpet.
- This claim by the landlord has been totally fabricated and it is totally without merit.
- They have provided numerous photos that show the good condition of the rental unit when they vacated, and one of the photos even shows that the landlords have not refinished that hardwood flooring, as the new owners allow them in, to take photos.

The respondents feel that the landlords claim should be dismissed in full.

Analysis

It is my finding that the landlord has not met the burden of proving any of the claim.

This claim is basically just the landlord's word against that of the tenant as there is little information provided with regards to the condition of the rental unit at the beginning of the tenancy, and no move-out inspection was done at the end of the tenancy.

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.

Further the landlords claim also includes items that were never done. There was no cost for Pond removal, no cost for linoleum replacement, and no cost for replacing carpets as none of these were ever done prior to the sale of the rental unit.

Landlord claims that are photo evidence clearly shows damage to the carpets, I disagree as the photo is not clear and does not clearly show any dirt or damage.

Conclusion

Landlords application

The landlords application is dismissed in full without leave to reapply.

Tenants application

I have issued an order for the landlord to pay \$1478.80 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: November 14, 2011.

Residential Tenancy Branch