



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord, compensation for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail, but he could not remember when he mailed the hearing package to the Tenants. The Tenant said she did receive the hearing package, but did not receive the evidence package that the Landlord said he sent to them. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there a loss or damage and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on July 1, 2010 as a 1 year fixed term tenancy with an expiry date of June 30, 2011. Rent was \$2,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,100.00 prior to July 1, 2010. The Landlord said the Tenants moved out of the rental unit on July 28, 2011.

The Landlord said he did not complete a move in condition inspection report or a move out condition inspection report. The Landlord continued to say he did ask the Tenant once to do the move out condition inspection report and the Tenant declined to participate in the inspection. The Landlord did not complete a move out condition inspection report in the absence of the Tenants.

The Landlord continued to say the rental unit was not clean when the Tenants moved out and he is claiming compensation to clean the unit. The Landlord said he is claiming \$252.00 for hiring a cleaning service (receipt in evidence), \$180.00 for pressure washing (receipt in evidence), \$250.82 for main line sewer cleaning which happened

earlier in the tenancy, \$80.00 for courier fees for this application and \$30.00 for a new plate set. The Landlord said he had other costs in addition to these claims, so he rounded the claim up to \$900.00 on the application. The Landlord also said he is claiming for the filing fee of \$50.00 for this proceeding. The Landlord said his total claim is \$950.00.

In addition the Landlord said he submitted a letter from the new tenant in the unit that confirms the unit was in an unclean state when he moved in July 30, 2011. The Landlord said the Tenants left the unit unclean as show by the 64 photographs, that he submitted into evidence, of the unit taken after the Tenants moved out.

The Tenant said the unit was not clean when they moved in as the Landlord and his family just moved out of the unit the day before they moved in. The Tenant said they cleaned the unit on moving in and when they moved out. The Tenant continued to say the unit was cleaner when they moved out than when they moved in. The Tenant said they did not receive the photographic evidence and receipts that the Landlord said he sent them, so she was unable to respond to the allegations the Landlord has made with respect to the photographs. The Tenant did say she thought the sewer clog may have been caused by one of the other tenants in the building, but it happened in the first half of the tenancy so she did not understand why it was in the Landlord's claim. The Tenant continued to say they had a number of issues during the course of this tenancy; including no conditions inspections were done, there were some toilet issues during the tenancy and the unit was not clean when they moved in. The Tenant said she did not agree with the Landlord's allegations or his claims for compensation.

Analysis

Sections 23 and 24 explain the requirements and consequences for landlords and tenants with respect to move in condition inspection reports. They are as follows:

Condition inspection: start of tenancy or new pet

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- (b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

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

I accept the evidence and testimony as provided to the hearing by both parties that indicates a move in condition inspection report on the rental unit was not completed; therefore the Landlord's claim on the Tenant's security deposit is extinguished. I dismiss the Landlords application to retain the Tenants' security deposit. Further I order the Landlord to return the Tenants' security deposit of \$1,100.00 forthwith.

As well, because no move in condition inspection report was completed by the Landlord and there is no other evidence submitted that established a base line for the condition of the rental unit at the start of the tenancy, it is not possible to determine the extent of damage or loss that the Landlord is claiming. To establish a claim for compensation an applicant must prove loss or damage actually exists, the loss or damage happened solely because of the neglect of the respondent, the loss must be verified and the landlord must show how they tried to mitigate or minimize the loss. In this situation the Landlord has not established grounds to prove the damage or loss because there no evidence of the condition of the rental unit at the start of the tenancy. I find the Landlord has not established grounds for compensation for loss or damage and I dismiss the Landlord's application for \$900.00 for cleaning the rental unit and other costs he incurred.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of \$50.00 for the filing fee for this proceeding which he has already paid.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the Tenants' security deposit of \$1,100.00 forthwith.

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 15, 2011.

Residential Tenancy Branch