



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application to retain the tenants' security deposit and recover the filing fee paid for this application. The landlord testified that each of the tenants were served with the hearing package via registered mail sent on July 29, 2011 to the forwarding address provided verbally by the male tenant on July 7, 2011. The landlord provided two registered mail tracking numbers as proof of service and testified that the registered mail was not returned to the landlord. The landlord further testified that additional supporting documentation was served to the tenants via regular mail sent on October 18, 2011 to the same forwarding address. I was satisfied the tenants were sufficiently served in a manner that complies with the Act and I proceeded to hear from the landlord without the tenants present.

Issue(s) to be Decided

Has the landlord established an entitlement to retain the tenants' security deposit?

Background and Evidence

The tenancy commenced March 1, 2011 for a fixed term set to expire on August 31, 2011. The tenants paid a \$700.00 security deposit and were required to pay rent of \$1,400.00 on the 1st day of every month. On June 27, 2011 the landlord received a written notice to end tenancy from the tenants. On June 29, 2011 the landlord went to the rental unit and discovered that the majority of the tenant's possessions had been removed from the property. The landlord spoke with the tenants about conducting a move-out inspection when they were finished vacating. The landlord did not hear further from the tenants and then on July 3, 2011 the landlord posted on the rental unit door a Notice of Final Opportunity to Schedule a Condition Inspection for an inspection scheduled for July 7, 2011 at 10:00 a.m. On July 7, 2011 the landlord attended the property, found the keys inside the rental unit, and completed the move-out inspection without the tenants present. The landlord was able to re-rent the unit effective July 8, 2011.

The landlord is requesting retention of the \$700.00 security deposit in full satisfaction of the following damages and losses:

Loss of rent – 7 days in July 2011	\$ 316.12
Carpet cleaning	345.53
Garden cleanup	90.00
Property cleanup	<u>75.00</u>
Total damages and losses	\$ 826.65

The landlord pointed to the move-out inspection report that showed stained and dirty carpeting in the master bedroom, second bedroom, stairs, and the basement. The landlord submitted that lawn mowing and garden weeding was the tenants' responsibility under the tenancy agreement and the tenants left a pile of debris in the backyard and lots of weeds in the garden beds. The landlord further submitted that the tenants left abandoned possessions or garbage in the garage which required removal and disposal.

Documentary evidence provided in support of the landlord's claim included: the tenancy agreement; the tenants' notice to end tenancy; the Notice regarding the move-out inspection; the condition inspection reports; and invoices.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless there is a preponderance of evidence to the contrary. I accept the undisputed move-out condition inspection report as a fair

representation of the state of the rental unit at the end of the tenancy and have relied upon it in reaching this decision.

Upon consideration of the tenancy agreement and tenants' notice to end tenancy, I am satisfied the tenants breached the tenancy agreement and Act by ending their fixed term tenancy early and I hold the tenants responsible for compensating the landlord for the loss of rent for the first 7 days of July 2011. Therefore, I find the landlord entitled to recover \$316.13 in loss of rent from the tenants.

Upon review of the condition inspection report, I am satisfied the tenants left the carpets dirty and stained which does not meet their requirement to leave the rental unit "reasonably clean" as provided by section 32 of the Act. Therefore, I find the landlord entitled to recover the \$345.53 carpet cleaning costs incurred July 7, 2011.

Upon review of the tenancy agreement I am satisfied the tenants were required to maintain the yard during their tenancy and upon review of the condition inspection report I accept that the tenants failed to satisfy the terms of their tenancy agreement. However, I note that the invoice provided by the landlord indicates the yard work was performed on July 21, 2011 which would likely include weed growth after the new tenancy commenced. Therefore, I find the landlord entitled to only a portion of the \$90.00 invoice.

Upon review of the condition inspection report I am satisfied the tenants did not clean the windows and left garbage in the garage. Therefore, I grant the landlord's request to recover the \$75.00 charged to the landlord for window cleaning and garbage removal on July 7, 2011.

In light of the above findings, the landlord has established damages and losses exceeding \$700.00 and I authorize the landlord to retain the security deposit. Given the landlord's success in this application I award the filing fee to the landlord. The landlord is provided a Monetary Order in the amount of \$50.00 to serve upon the tenants.

Conclusion

The landlord is authorized to retain the tenants' security deposit in satisfaction of the landlords' damages and losses. The landlord is provided a Monetary Order in the amount of \$50.00 representing the filing fee awarded to the landlord.

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 03, 2011.

Residential Tenancy Branch