



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both landlords and both tenants participated in the conference call hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on October 1, 2010. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$625. The landlord and the tenants carried out a move-in inspection and completed a condition inspection report on September 3, 2010. The tenancy ended on September 30, 2011. The tenants gave the landlord their forwarding address in writing on September 30, 2011. The landlord and the tenants did not do a joint move-out inspection. The landlord has claimed costs for cleaning the rental unit after the tenants vacated. The tenants have disputed the landlord's claim in its entirety.

Landlord's Evidence

On September 30, 2011 the landlord attended the rental unit at 1:00 pm and again at 5:30 pm, but the tenants were still packing so the landlord could not do a move-out inspection. The landlord went back on October 1, 2011, but the tenants were gone. The landlord tried to call the tenants to arrange a move-out inspection, but the tenants did not answer. The landlord had new tenants moving in on October 1, 2011, so they could not do a move-out inspection with the tenants.

The landlord has claimed the following amounts:

- 1) \$75 to change the locks – the tenants did not return the keys. The landlord did not provide a receipt for this amount.
- 2) \$65 for cleaning the fridge and under and behind the fridge; \$45 for cleaning cupboards; \$20 for cleaning floors; \$45 for cleaning two bathrooms; and \$45 for cleaning drapes, windows and closets – the landlord provided a document titled “cleaning list and move-out instruction,” which stated the cleaning prices based on a cleaning company’s rate of \$90 per hour for two cleaners. The landlord also provided photographs of various items in the rental unit. The landlord did not provide an invoice for the cleaning.
- 3) \$20 to replace light bulbs and fluorescent lights – the landlord did not provide a receipt that identified these items.
- 4) \$400 for cleaning the carpets – the carpets were very dirty and there was a bad smell of pet urine. The landlord provided a receipt for \$85 for steam cleaning the living room and dining room plus deodorizing; a Sears receipt for \$26.87 for pet stain and odour products; and a receipt for \$49.19 for rental of a carpet cleaning machine.
- 5) \$376 for hauling garbage – the landlord provided a receipt for this amount.

Tenant’s Response

The tenants stated that they did cleaning, including shampooing the carpets, when they moved out. The rental unit was just an old house that the landlord refused to properly maintain. None of the problems with the rental unit were the fault of the tenants. Several times in the tenancy the tenants reported problems to the landlord, including problems with plumbing, heat and mould, but the landlord did not want to fix anything and told the tenants if they did not like it they could move out.

The landlord’s photographs of the rental unit were taken while the tenants were in the process of moving out, not after they had finished cleaning and removing their possessions.

Analysis

Landlord’s Claim

I find that the landlord has failed to provide sufficient evidence to support any part of their claim. The landlord did not provide receipts for the actual value changing the locks, replacing lights or for cleaning. The landlord did not dispute the tenants' submission that the photographs were taken before the tenants had fully moved out. The photographs appear to depict a fairly old house that has not been fully maintained. I therefore accept the tenants' testimony as credible that the rental unit had problems that were the landlord's responsibility to maintain. The amounts in the landlord's receipts for carpet cleaning and deodorizing do not equal the claim by the landlord for carpet cleaning. The landlord did not provide sufficient evidence to establish that all of the items they hauled were left behind by the tenants.

Security Deposit

The landlord failed to provide the tenants with written notice of an opportunity to schedule a move-out inspection, as required by the Act. When a landlord fails to comply with the Act in regard to move-in or move-out inspections, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord did not provide the tenants with written notice of an opportunity to schedule a move-out inspection, they lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on September 30, 2011 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and they failed to return the tenant's security deposit within 15 days of having received his forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of the deposit, in the amount of \$1250.

Filing Fee

As the landlord's claim was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed.

I grant the tenants an order under section 67 for the balance due of \$1250. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: December 20, 2011.

Residential Tenancy Branch