



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

At the outset of the hearing I noted for the landlord that the tenant's identified that the landlord had incorrectly named the female respondent on the Application. With the landlord's permission I amended the Application to reflect the correct name.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 35, 36, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on February 1, 2010 for a twenty one month fixed term tenancy for the monthly rent of \$1,800.00 due on the 1st of each month with a security deposit of \$900.00 paid.

The landlord submitted into evidence the following documents:

- A copy of a Condition Inspection Report completed for the move in of these tenants on January 20, 2010 signed by both parties providing, in part, that all lighting fixtures are clean and no comment on the condition of the parking stalls included in the rent;
- A copy of a Condition Inspection Report completed for the move out of these tenants on October 31, 2011 indicating that the light fixtures in the entry and the second bedroom are dirty and that there is an oil stain in one of the parking stalls;
- An invoice for cleaning the oil stains in the parking stall in the amount of \$84.00; and
- An invoice for cleaning of all light fixtures in the amount of \$44.80.

The landlord seeks to retain the costs of cleaning the parking stall and cleaning of the light fixtures in the amount of \$128.80 plus the filing fee for this Application.

The tenants assert the landlord failed to provide copies of both Condition Inspection Reports in accordance with the time requirements of the *Act* and regulations. The tenants state they received a copy of the move in Report on February 8, 2010 or 19 days after the inspection was completed. They also state they received a copy of the move out Report on November 24, 2011 by picking it up from the landlord. The landlord submits they provided the landlord with their forwarding address when they gave the landlord their notice to end the tenancy on September 30, 2011.

The tenants stated that the move in condition inspection completed on January 20, 2010 did not include an inspection of the parking stalls as such the landlord cannot confirm that the oil stain did not exist prior to the tenancy. The landlord testified that the condo property manager provided the invoice for the cleaning and he would not have done so had the work not been required. The condo property manager was not available to provide any testimony.

The tenants further contend that the landlord should not be entitled to cleaning of the light fixtures because he owns the company that did the cleaning and the tenants see this as a conflict of interest. The female tenant testified that the only reason she did not clean the two fixtures in the report is that they were not reachable due to their height. The tenant testified she did clean all of the other fixtures.

Analysis

Section 23 of the *Act* requires a landlord, at the start of a tenancy, complete a condition inspection report and provide a copy to the tenants in accordance with the regulation. In addition Section 35 requires the landlord to do the same at the end of the tenancy.

Section 18 of the Residential Tenancy Regulation sets the deadline for provide the tenants with a copy of the move in Report within 7 days of the inspection and within 15 after the later of the day the inspection was completed and the landlord receives the tenants' forwarding address in writing.

Section 24 of the *Act* states that if the landlord has failed to comply with Section 23 and Section 36 states that if the landlord has failed to comply with Section 35 the landlord has extinguished their right to claim against the security deposit. This however does not extinguish the landlord's right to file an Application for damage to the rental unit.

Based on the tenant's testimony and evidence I accept the landlord *may have* extinguished his right to claim against the security deposit, I am not convinced conclusively that the landlord did. However Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's

forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit. As the landlord filed his Application on November 14, 2011 I find the landlord has complied with Section 38(1) of the *Act* and is not required to double the amount of the security deposit.

I accept the tenant's position that the landlord has failed to establish the condition of the parking stall assigned to the tenants at the start of the tenancy. As such, I find the landlord has failed to establish this damage resulted from the tenancy and the tenant's cannot therefore be held responsible for the repair.

As to the landlord's claim for cleaning the light fixtures, I find that since the tenants signed the move out Condition Inspection Report acknowledging that at least two light fixtures required cleaning it is reasonable that the landlord would have all the light fixtures checked and cleaned. I also find it reasonable that after a tenancy of nearly two years the tenant should be held responsible for the cleaning required.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$69.80** comprised of \$44.80 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord was only partially successful in his claim.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$900.00 in satisfaction of this claim, pursuant to Section 72(2)(b). I grant a monetary order to the tenants for the return of the balance of the security deposit in the amount of **\$830.20**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: January 31, 2012.

Residential Tenancy Branch