



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPB

Introduction

This matter dealt with an application by the Landlord, for an Order of Possession for a breach of the tenancy agreement and to retain the Tenant's security deposit.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail, on December 30, 2011. The Tenant said she received the application and hearing package. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Landlord said the tenancy ended on December 14, 2011 and she has possession of the rental unit, so the Landlord said she was withdrawing the application for an Order of Possession for breach of a material term of the tenancy agreement.

Issues(s) to be Decided

1. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on January 26, 2011 as a 1 year fixed term tenancy with an expiry date of January 26, 2012. Rent was \$1,300.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$650.00 on January 26, 2011. The Landlord said the Tenant moved out of the rental unit on December 14, 2011 as a result of the Landlord issuing a Notice to End Tenancy.

The Landlord said she did not complete a move in condition inspection report, but did complete a move out condition inspection report. The Landlord did not include the move out condition inspection report in the evidence. The Tenant said she did not receive a copy of the move out condition inspection report from the Landlord, although it was completed and signed.

The Landlord continued to say the rental unit was not clean and there was painting that was needed to be done when the Tenant moved out. The Landlord said she is claiming compensation to clean and paint the unit. The Landlord said her application is for

\$900.00, but she did not submit any receipts or invoices that prove that a loss actually has happened or exists. The Landlord said she has included photographs showing the condition of the rental unit on move out and there is a letter from the existing tenant about the condition of the unit when she moved in.

The Tenant said the unit was clean when she moved out and she gave the Landlord her forwarding address in writing on December 14, 2011. The Tenant said she submitted photographs of the rental unit on move out or December 14, 2011 to show the units condition. The Landlord confirmed receiving the Tenant's forwarding address in writing on December 14, 2011. The Tenant said she has not received her security deposit back and she has asked the Landlord for its return.

The Tenant submitted in her evidence a statement that said the Landlord and she had inspected the rental unit on December 14, 2011 and both of them signed the form with no claim indicated against the Tenant's security deposit. I could not confirm this as the move out condition inspection report was not submitted by the Landlord and the Tenant did not receive a copy of the report from the Landlord.

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 comply with the Residential Tenancy Act in regards to the return of the Tenant's security deposit of \$650.00.

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 is 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.

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 she has already paid.

Conclusion

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

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*.

Residential Tenancy Branch