



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord for an order of possession as employment has ended, a monetary order for damages, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began April 24, 2011 with monthly rent of \$1050.00 and the tenant paid a security deposit of \$525.00.

It was confirmed at the start of the hearing that as the tenant had vacated the rental unit that the landlord did not require an order of possession for the rental unit and that portion of their application was dismissed.

The landlord testified that when the tenant vacated the rental unit they found that the suite required cleaning, only 1 key was returned to the landlord, and walls were damaged and required repair and repainting. The landlord stated that they had spent a substantial amount of time and money getting the rental unit back to rentable condition due to the poor repairs jobs the tenant had done on the walls, scratches on the walls and the rental unit being dirty. The landlord stated that they had not provided receipts for the work done as one of them is a professional painter and had completed the work.

The tenant testified that she had provided 30 days notice to the landlord on September 30, 2011 by registered mail and included her forwarding address for return of the security deposit. The tenant stated that on October 31, 2011 the landlord's daughter attended the rental unit and the parties completed a move out condition inspection

report. The tenant stated that she was advised that everything looked good and everything on the move out condition report was checked off as OK.

The tenant stated that on November 15, 2011 she received a letter from the landlord's stating that there were repairs and cleaning required in the rental unit and the locks had to be changed as only 1 key was returned. The tenant stated that a copy of the move out inspection was included with the landlord's letter and that the report had been altered by the landlord after the fact and without the tenant present.

The landlord testified that the changes to the move out condition inspection report were done with the tenant's consent as their agent had noted on the bottom of the move out report that photos of the rental unit would be sent to the landlord for review. The landlord stated that changes to the move out condition inspection report were completed by them after they verified the condition of the rental unit from the photos they were sent. The landlord acknowledged that a second inspection was not done with the tenant present nor was the tenant present when the move out condition report was revised.

The landlord stated that the tenant had breached the tenancy agreement by having a cat and kittens in the rental unit however as the tenancy ended October 31, 2011 that is not a matter for this hearing nor is it part of the landlord's application.

The tenant at the end of the hearing stated that she had no knowledge of the landlord's claim and had not been in receipt of the landlord's hearing package. The landlord verified that their hearing documents had been sent to the tenant by registered mail at the forwarding address provided to the landlord by the tenant.

The landlord in this application is seeking \$525.00 for cleaning, painting materials and labour to repaint the rental unit.

The tenant in this application is seeking return of the \$525.00 security deposit.

Analysis

In regards to the tenant not being served with the landlord's claim, Residential Tenancy Branch Policy Guideline **12 Service Provisions** speaks to:

Registered Mail

Where a tenant is serving a landlord by registered mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord.

Where a landlord is serving a tenant by registered mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.

I therefore find that the tenant was served with the landlord's claim in accordance with the Act.

Based on the evidence and testimony of the parties I am not satisfied that the landlord has proven its case.

A move out inspection was completed by the landlord on October 31, 2010 with the tenant present, and the rental unit found to be in acceptable condition. The Act does not allow for a landlord to then at a later date, and without the tenant present, determine additional damage or areas not cleaned in the rental unit that were not noted on the original move out condition inspection report.

Residential Tenancy Act section **35 Condition inspection**: end of tenancy speaks to:

(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

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

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

(4) 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.

Part 3 of the Residential Tenancy Act Regulations further outlines the requirements for landlords and tenant regarding move in and move out inspections.

In relation to the landlord's claim for damages and cleaning costs I find, pursuant to section 62(2) of the Act, that in the absence of any verification of the costs for damages or cleaning and with the original move out inspection determining that the rental unit was in acceptable condition at the end of the tenancy, that the landlord's claim be dismissed without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return the security deposit.

Accordingly I find that the tenant is entitled to a monetary order for \$525.00.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for \$525.00 in return of the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$575.00**.

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: February 7, 2012

Residential Tenancy Branch