



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order to keep part of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Landlords entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 1, 2001 and ended on October 31, 2011. Rent in the amount of \$1,350.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$700.00. During the tenancy, the unit was purchased by the current Landlords (the “Landlords”).

At the beginning of the tenancy, a move-in condition inspection was conducted. The Tenant states that no copy of the inspection report was received from the previous landlord. The Landlord states that they have the inspection report and that it was signed by both Parties. The Landlord did not provide a copy of that report as evidence.

The Parties agree that two opportunities for a move-out inspection was declined by the Tenant. The Tenant states that they were declined as the Tenant did not want to do an inspection without the previous landlord being present as this person knew the state of the unit at move-in. The Landlord provided no copy of a move-out inspection report.

The Landlord states that the Tenant failed to clean the unit at the end of the tenancy and failed to pay hydro costs for the last two weeks of the tenancy. The Landlord provided photos of the unit but no invoices for the costs claimed. The Tenant states that the unit was clean at move-out and denies owing any money for hydro.

Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit for damage to the residential property is extinguished if, inter alia, the landlord does not give the tenant a copy of the completed inspection report. Given that the Tenant has disputed receiving a copy of the move-in report and considering that the Landlord did not dispute the Tenant's statement or supply a copy of that report as evidence, I find on a balance of probabilities that the Landlord did not give the Tenant a copy of the move-in report. Accordingly, I find that the Landlord's right to claim against the security deposit has been extinguished.

Section 36 of the Act provides that where a tenant fails to participate on either of two offers by the landlord to conduct a move-out inspection, the tenant's right to return of the security deposit is extinguished. Although the Tenant failed to attend either of two move-out inspections offered, as the Landlord was the first Party to have its right extinguished, I find that the subsequent extinguishment by the Tenant has no effect.

In any event, even if the Landlord's claim was to be determined on merit alone, I find that the Landlord failed to corroborate both the damages and the costs by way of invoices and copies of the move-in and move-out report and therefore failed to establish its claim on a balance of probabilities.

As the Landlord's right to claim against the security deposit has been extinguished, I dismiss the application of the Landlord and order the Landlord to forthwith return the security deposit plus interest in the amount of \$700.00 to the Tenant.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$700.00**. If necessary, 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: February 16, 2012.

Residential Tenancy Branch