



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

The tenant's application is a request for an order for return of double the \$475.00 security deposit for a total of \$950.00, and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$793.56, and a request for recovery of the \$50.00 filing fee. The landlords also request an order allowing them to keep the full security deposit towards this claim.

Tenants application

Background and Evidence

The tenants testified that:

- They moved out of the rental unit on November 19, 2011 and turned over the keys on November 22, 2011.
- The landlord never offered to do a move out inspection.
- They gave the landlords a forwarding address in writing hand-delivered to the main office on December 16, 2011.
- To date they have not received any of the security deposit back, and the 15 day time limit is well past.

The tenants are therefore requesting an order for return of double their security deposit.

The landlord testified that:

- She did not receive a written forwarding address from the tenants, and she does not believe that the head office received one either as they would have forwarded it to her.
- She called the tenant twice to do an inspection but the tenant would not participate, she never gave any written opportunity to do a final inspection because she did not have a forwarding address.

The landlord therefore requests that this application be dismissed.

Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

Is my decision that I accept the tenant's testimony that a forwarding address in writing was served to the head office on December 16, 2011.

The building manager claims that the head office would have forwarded the forwarding address to her had they received it, however we have no direct evidence from the head office stating that the forwarding address was not received.

I therefore prefer the tenant's sworn testimony on this matter.

Further it's also my finding that the landlord failed to do the required move out inspection. I accept the tenants testimony that the landlord did not offer an opportunity to do a move out inspection, and certainly no written opportunity a final inspection was ever given to the tenant.

This tenancy ended on November 22, 2011 and the landlord had a forwarding address in writing by December 16, 2011 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore it is my decision that the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$475.00 and therefore the landlord must pay \$950.00.

I also order recovery of the \$50.00 filing fee.

Total amount allowed in the tenants claim-- \$1000.00

Landlord's application

Background and Evidence

Landlord testified that:

- The tenants had the carpets professionally cleaned however it was their decision that they were not clean enough and therefore they had them cleaned again.
- The tenants did some cleaning in the rental unit however there was still extra cleaning required at the end of the tenancy and therefore they are charging the tenant for the extra cleaning.
- They always paint the suites one color only and at the end of this tenancy they found that the tenant's suite had two different colors in it and therefore the tenants must have done some painting themselves. They therefore had to repaint the rental unit to get it back to the original color.
- At the end of the tenancy they found that the kitchen faucet was broken and it had to be repaired.
- The tenants also broke a toilet tank cover during the tenancy and therefore at the end of the tenancy the toilet tank had to be replaced as they could not just replace the cover.

The landlords are therefore requesting a monetary order as follows:

Carpet cleaning	\$95.20
General cleaning labour	\$48.00
General cleaning materials	\$9.60
Painting labour first coat	\$252.00
Painting labour second coat	\$140.00

Cost of paint	\$137.20
Repair kitchen faucet	\$41.64
Replace toilet tank	\$69.92
Filing fee	\$50.00
Total	\$843.56

The landlords therefore request an order allowing them to keep the full security deposit towards the claim and requested a monetary order be issued for the difference.

The tenants testified that:

- They had the carpets professionally cleaned when they left and the carpets were left in very good condition.
- They also thoroughly cleaned the rental unit when they moved out, and if there was any dirt in the rental unit it occurred after they vacated.
- They did not do any painting in the rental unit when they lived there. The previous building manager painted the unit before they moved in and they did not change the colors at any time.
- They did not cause any damage to the kitchen faucet and, in fact it, worked fine when they vacated as they use the faucet to run water for cleaning. If the faucet was broken at all it was only from normal wear and tear and was not caused by them.
- They do not dispute the claim for the broken toilet tank.

Analysis

It is my decision that the landlords have not met the burden of proving the majority of their claim.

I will not allow anything further for cleaning or carpet cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

I also deny the claim for painting. The landlords claim that the unit would not have been painted that color however this particular building manager was not present at the beginning of the tenancy and there is no one from the landlord's side who is provided any direct evidence as to the color of the rental unit when the tenants moved in.

I therefore accept the tenants direct testimony that the rental unit was painted prior to them moving in and that they did no painting themselves.

I also deny the claim for repair of the kitchen faucet, as the landlords have provided no evidence to show that the damage to the kitchen faucet was the result of any wilful or negligent actions on the part of the tenants.

The tenants have not disputed the claim for replacing the toilet tank and therefore that is the only portion of the landlords claim that I have allowed.

I further order that the landlord cover the cost of the filing fee.

Total amount of landlord's claim I have allowed-- \$69.92

Conclusion

I have allowed the tenants full claim of \$1000.00.

I have allowed \$69.92 of the landlords claim, and the remainder of the claim is dismissed without leave to reapply.

I therefore set off the amount allowed in the landlords claim against the amount allowed in the tenants claim and I have issued an order for the landlords to pay \$930.08 to the tenants.

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: March 12, 2012.

Residential Tenancy Branch