



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery to an adult in the Tenant's home on December 16, 2011. 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 all parties present.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?

Background and Evidence

The Tenant said he had lived in the unit since 2005, but this tenancy started on May 28, 2011 when the Landlord purchased the rental unit. The tenancy was verbal and was on a month to month basis. Rent was \$770.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$385.00 on June 1, 2011. This tenancy ended on July 20, 2011.

The Tenant said a move in condition inspection report was completed on his request on June 1, 2011, but it was on a hand written piece of paper and only covered some of the items in the rental unit. The Landlord thought a second move in report was completed on the RTB approved form, but then later in the conference call agreed the only move in report was the hand written one the Tenant had submitted into evidence. The Landlord did submit two letters from witness R.A. and S. V. which both said the unit was not clean and needed repairs when the Tenant moved out of the rental unit. Neither Witness R.A. nor S.V. were available to give affirmed testimony or to be cross examined.

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The Landlord said his total damage claim is for \$550.00. His claim includes \$201.55 (receipt in evidence) for carpet cleaning, \$200.00 (receipt in evidence) for general cleaning and \$150.00 to clean the blinds (no receipt in evidence). The Landlord said he is also requesting to recover the filing fee of \$50.00 for this application.

The Landlord said he purchased the house on May 26, 2011 and the Tenant was in the unit so a verbal tenancy agreement was made between them for the Tenant to rent the unit until July 20, 2011 when the Tenant agreed to move out. The Tenant said the Landlord did not return his security deposit so he made an application to the Residential Tenancy Branch and he was successful. The Tenant said the security deposit was returned in December, 2011.

The Tenant said he cleaned the unit before he moved out and the damage claims the Landlord is making are for damages that is already identified on the hand written move in condition inspection report. The Tenant provided a witness S.J. who gave affirmed testimony that when the Tenant moved out of the unit she walked through it with him and the Witness said the rental unit was clean. The Landlord said the Tenant's witness S.J. was not a credible witness and she was not telling the truth. The Tenant continued to say he tried three times to do a move out walk through with the Landlord, but the Landlord was not available. The Landlord said he tried to set up a walk through with the Tenant but he was unsuccessful and as a result no move out condition inspection report was done.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

On reviewing the evidence and testimony, I find the hand written walk through report completed on June 1, 2011 does not adequately determine the condition of the rental unit on move in and there is no move out condition inspection report. As well the witness testimony and submissions are contradictory; therefore it is unclear as to the condition of the rental unit on move in and on move out. It is the Landlord responsibility to do both these report and if the report are not completed the Landlord is unable to



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establish the condition of the rental unit at the start or end of the tenancy. Consequently the Landlord cannot establish proof that the Tenant damaged the rental unit or left it in a condition that was not similar to the start of the tenancy. As a result of lack of proof to establish the condition of the rental unit at the start or the end of the tenancy, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

As well, as the Landlord was not successful in this matter I dismiss his application to recover the filing fee of \$50.00 from the Tenant.

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*.

Dispute Resolution Officer