



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for the return of double the amount of the security deposit, an order for the landlord to comply with the Act, regulation, or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the landlord be issued an order concerning this tenancy?

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of. Pursuant to a written agreement, the tenancy started in 2008. On January 22, 2012, the parties signed a mutual agreement to end the tenancy and the tenant was given two weeks from that date to vacate the rental unit. The rent was \$550.00 per month and the tenant paid a security deposit of \$250.00.

There was no dispute that the tenant gave the landlord her forwarding address on January 31, 2012.

The tenant testified that she was never asked to do a move out inspection. The landlord said that he offered the tenant to do an inspection on January 24 or 25, and that the tenant declined because she had no time and that it would invade her privacy. The landlord quoted a text message sent to the tenant on January 22, 2012, giving the tenant an opportunity to do an inspection on January 24 or 25, 2012; the landlord quoted the tenant's reply that these dates would not work. She tenant provided a copy of a text message from the landlord dated January 23, 2012, in which the landlord thanked the tenant for the pictures; the tenant states that these photographs were sent in lieu of the on-site inspection. The landlord stated that the photographs did not show the damages.

The landlord stated that he posted a final notice to schedule an inspection on the tenant's door on January 30, 2012, and provided photographic evidence. The tenant said that she never saw the notice.

The landlord provided photographic evidence of knife cuts on the kitchen counter, a dirty stove top and oven, and a broken bedroom window. The landlord provided an estimate of \$134.60 to repair the window, and an estimate of \$60.00 in labour without materials for other repairs. The landlord said that the repairs were completed and that the total cost was \$359.00. The tenant said that she has no knowledge of a broken window.

Analysis

Section 36(1) of the Act states in part that a tenant's right of a security deposit is extinguished if the landlord complied with Section 35(2) [2 opportunities for inspection], and the tenant has not participated on either occasion.

I am satisfied that the landlord provided at least two opportunities to do the move-out inspection. If the tenant was not available on the proposed dates, she could have proposed other dates or arranged for someone to attend on her behalf. If the photographs were agreed by the landlord to replace the move-out inspection, the agreement should have been made in writing. Although the landlord acknowledged receipt of the photographs, I have no evidence before me that the landlord discharged the tenant's obligation to do a move-out inspection with him.

The tenant did not present evidence concerning the orders to the landlord and the tenancy ended; therefore it is not necessary that i consider this aspect of the application.

Conclusion

I find that the tenant's right to the security deposit is extinguished and the tenant's application is dismissed.

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 08, 2012

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Residential Tenancy Branch