



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application to retain part of the security deposit for cleaning. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established an entitlement to deduct cleaning costs from the tenant's security deposit?

Background and Evidence

The tenancy commenced March 15, 2011 and the tenant paid a \$535.00 security. The tenant vacated the rental unit on February 20, 2012 and a move-out inspection was conducted that day with the former manager. The move-out inspection report does not indicate that additional cleaning is required although there is an authorized deduction of \$125.44 for carpet cleaning. The tenant's forwarding address appears on the move-out inspection report dated February 20, 2012.

The landlord's agents explained that the former manager was terminated at the end of February 2012. On March 3 or 4, 2012 the landlord entered the unit and found it to be in need of a significant amount of cleaning. The landlord took photographs which were submitted into evidence. The landlord made this application on March 14, 2012 seeking to deduct an additional \$265.00 from the security deposit for cleaning.

The tenant submitted that approximately one week before the tenancy ended the former manager advised him as to what he needed to clean, which he did. The tenant acknowledged that he did not pull the stove or fridge out to clean behind or underneath the appliances as he was not told he needed to do so.

The tenant implied that the landlord's photographs were not of his unit. However, one of the photographs was of a broken light fixture which the tenant stated was broken at the beginning of the tenancy.

The tenant also pointed to the fact that the photographs were taken several days after he returned possession to the former manager.

The landlord responded by stating the photographs were of the rental unit, including the first photographs which is of the rental unit door showing the unit number. The landlord submitted that much of the grime is accumulated and not built up over a matter of days.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the condition inspection reports; photographs and an invoice for \$265.00.

I noted during the hearing that the landlord did not file the application until March 14, 2012. The landlord explained that the delay was because a new manager did not start work until early March 2011 and the necessary paperwork was not received until after the new manager started.

Analysis

As the applicant, the landlord bears the burden of proof, based on a balance of probabilities. Based upon the evidence before me, I provide the following findings and reasons with respect to the landlord's claims.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence as to the condition of the rental unit, unless there is a preponderance of evidence to the contrary.

In this case, I find the landlord has provided a preponderance of evidence that contradicts the assessment of the rental unit as indicated on the move-out inspection report. I make this finding based upon the following:

- The person completing the inspection report was terminated by the landlord;
- The photographs depict the condition as being very poor;
- The tenant acknowledged a broken light fixture which also appears in the landlord's photographs;
- The accumulated grime and dust does not built up to that extent in matter of days and more likely accumulated during the eleven month tenancy; and,

- The cleaning invoice is consistent with the dirt and grime shown in the photographs.

In light of the above, I find the landlord has shown, on the balance of probabilities, that the landlord is entitled to recover additional cleaning costs of \$265.00 from the tenant.

Based upon the undisputed evidence, I accept that the landlord obtained the tenant's written consent to make a deduction of \$125.44 from the \$535.00 security deposit. Accordingly, the landlord was obligated to either return the balance of the security deposit to the tenant or file an Application for Dispute Resolution seeking authorization to retain the balance of \$409.56 within the time limit established by section 38(1) of the Act.

Section 38(1) of the Act provides that a landlord has 15 days from the date the tenancy ends or the landlord receives the forwarding address, whichever date is later, to refund the security deposit or file an Application for Dispute Resolution. If the landlord violates section 38(1) the security deposit must be doubled pursuant to section 38(6) of the Act.

It was undisputed that the forwarding address was received by the landlord on February 20, 2012. I find that the tenancy ended on February 20, 2012 for the following reasons.

Section 44 of the Act provides for the various ways a tenancy ends. Section 44 provides, in part:

44 (1) A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit;

On February 20, 2012 the tenant had finished moving out, completed the move-out inspection with the landlord's agent, and returned the keys to the rental unit to the landlord's agent. I find the tenant had vacated the rental unit and returned possession of the unit to the landlord no later than February 20, 2012. Therefore, I find the tenancy ended February 20, 2012 pursuant to section 44(1)(d) and the landlord had until March 4, 2012 to file an Application for Dispute Resolution seeking to retain all or part of the balance of the tenants' security deposit.

Since the landlord did not make such an application until March 14, 2012 I find the landlord's application exceeded their statutory time limit and now the \$409.56 balance of security deposit is doubled pursuant to section 38(6) of the Act. In light of the above, the tenant is credited with \$819.12 [$\409.56×2].

As the landlord established an entitlement to recover the additional cleaning costs from the tenant I have awarded the filing fee to the landlord. The landlord has been awarded a total of \$315.00 [\$265.00 + \$50.00].

Pursuant to section 72 of the Act and Residential Tenancy Policy Guideline 17 I offset the above amounts and order the landlord to pay the tenant the balance of \$504.12 [\$819.12 – \$315.00] forthwith. Provided with this decision for the tenant is a Monetary Order to serve upon the landlord and enforce if necessary.

Conclusion

The landlord's request to recover \$265.00 in additional cleaning costs has been granted, as well as an award for recovery of the \$50.00 filing fee. The tenant has been credited with \$819.12 pursuant to section 38 of the Act. The landlord has been ordered to pay the tenant the balance of \$504.14 forthwith.

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: May 25, 2012.

Residential Tenancy Branch