



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD
 Landlord MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for loss or damage under the Act, regulations or tenancy agreement, for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on July 26, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on June 28, 2012, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so how much?
3. Is there loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to retain the Tenants' deposits?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on September 1, 2011 as a fixed term tenancy with an expiry date of April 30, 2012. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$700.00 in July, 2012.

The Tenant said they moved out of the rental unit on April 29, 2012 and gave the Landlord their forwarding address in writing on May 9, 2012 by email and in their application on June 28, 2012 by registered mail. The Landlord said he did not receive the Tenants' forwarding address by email on May 9, 2012. The Tenants said there was no move in or move out condition inspection reports completed. The Tenants said they have not received their security deposit back and as a result they were told by the Residential Tenancy Branch, that they could apply for double the security deposit. The Tenants said they are requesting 2 times their security deposit of \$700.00 or \$1,400.00 in total.

The Landlord agreed no condition inspection reports were completed with the Tenants, but the Landlord said he did a move out report without the Tenants. The Landlord said he did not send the Tenants a copy and he did not provide a copy of the move out report in his evidence package. The Landlord's application indicates a claim of \$1,381.89 for painting cleaning and repairs to the rental unit. The Landlord sent in receipts as supporting evidence for his claims.

The Tenants said the Landlord's claims are not valid because he did not do condition inspection reports at the start or the end of the tenancy.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out 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. In this situation the Landlord has not established a base line to determine if any damage was caused by this tenancy. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has shown by photographic evidence there was damage to the unit the Landlord has not established that the unit was in poorer condition on move out than it was on move in. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the Tenants' application for double their security deposit in the amount of \$1,400.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:



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Conclusion

The Landlord's application for damages and to retain the Tenants' security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$1,400.00.

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*.

Residential Tenancy Branch