



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 an Application for Dispute Resolution by the tenants for the return of all or part of a security deposit and to recover the cost of filing their application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue(s) to be Decided

Are the tenants entitled to the return of all or part of a security deposit?

Background and Evidence

The tenancy began on May, 1, 2011. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenants.

The parties agreed a move-in inspection was completed and a move-out inspection was completed.

The tenants' agent stated the tenants did not receive a copy of the move-in inspection. Therefore, the landlord has extinguished their rights to claim against the security deposit.

The landlord stated a copy was not provided at the move-in inspection, however, a copy of the move-in inspection report was placed in the tenant's mailbox within the required time frame.

The tenants' agent stated that tenants do not agree with the deduction of \$180.00 from their security deposit. The tenants' agent stated the tenant (JC) participated in the move-out inspection and signed the move-out inspection report. However, the amount of \$180.00 was not filled in at the time of the move-out inspection.

The landlord stated the amount was not filled in at the time of the move-out inspection. However, the tenant agreed in writing that they were responsible for the damage and that the cost of those repairs would be deducted from the security deposit.

The landlord stated it was agreed with the tenant (JC) that once the repairs were completed she would call the tenants and notify them of the cost. The landlord stated she called the tenants and they were satisfied with the cost and that is when she wrote the amount of \$180.00 on the move-out inspection report and sent the balance of the security deposit to the tenants.

The landlord stated some time later she received a call from the tenants, which they stated that after they had spoken to many people and their parent that they feel the amount claim is unreasonable and that the damage was reasonable wear and tear and they should not be responsible for any of those cost. The landlord stated she informed the tenants that if they provided 2 or 3 quotes on the repairs then she would average out the cost of those quotes and return the difference. The landlord stated this was agreed to by the tenants, however, she never received any quotes from the tenants.

The tenants' agent confirms this conversation, however the quotes were not provided as they felt the damage was normal wear and tear on the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the parties participated in a move-in inspection. The landlord provided the tenants with a copy of the report by place a copy of the report in the tenant's mailbox.

Section 88 (e) of the Act allows the landlord to serve a condition inspection report by leaving a copy in a mail box or slot for the address by which the person resides. As a result, I find the tenants were served in accordance with the Act and the landlord has not extinguished their rights to claim against the security deposit.

The move-out inspection report was signed by the tenant (JC), the tenant (JC) agreed that there was damage to unit and agreed that they are responsible for those cost. However, the exact amount was not determined at that time of the inspection.

The undisputed testimony of the landlord was there was a discussion with the tenant (JC) at the move-out inspection regarding the cost, and it was agree by the parties that the landlord would provide them confirmation of the amount when the work was complete. The evidence of the landlord she was she provided them with the cost after the work was done and was given their consent to retain the amount of \$180.00.

However, it was only after the tenants discussed this issued with other people and their parents that they no longer agreed as they felt the damage was reasonable wear and tear.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenants' agent did not dispute that there was as prior agreement between the parties to retain \$180.00 from the security deposit. Later the tenants changed their opinion as they believed after talking with other people the damage was reasonable wear and tear and should not have to pay any costs.

However, Section 21 of the Act states a condition inspection report completed in accordance with the act is evidence of the **state of repair and condition** of the rental unit, unless the there is a preponderance of evidence to the contrary.

The tenant agreed in that report that they were responsible for certain damages to the rental unit and gave the landlord permission to deduction those repairs from the security deposit.

While, filling in an amount after the move-out inspection was completed is not acceptable, I do not find there was any attempt to mislead or to commit fraud by the landlord. The evidence of the landlord was she wrote the amount in only after it was agreed to by the tenants. This agreement was not disputed by the tenants' agent

Further, after the dispute arose over the amount claimed by the landlord, the tenants were given an opportunity to provide the landlord with quotes for the repairs and the landlord would average those quotes and return the difference. The tenants agreed to provide quotes, but failed to do so.

I find the tenants' agent has not proven a preponderance of evidence to the contrary as required by Section 21 of the Act. As a result the tenants' application is dismissed.

Conclusion

The tenants' 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: September 19, 2012.

Residential Tenancy Branch