



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The female tenant (the tenant) confirmed that both tenants received a copy of the landlord's dispute resolution hearing package posted on their door on September 2, 2012. Although section 89 of the *Act* does not allow an application for a monetary award to be served to a party by posting on a door, I am satisfied nevertheless that the tenants did receive the landlord's dispute resolution hearing package and were prepared to address the issues identified in the landlord's application.

The tenant testified that the tenants did not receive any photographs submitted into evidence by the landlord. The landlord testified that he did not provide the 14 photographs he forwarded to the Residential Tenancy Branch to the tenants. As the landlord has not provided his photographic evidence to the tenants, I cannot consider that evidence in reaching my decision.

Issues(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed that the tenants moved into this rental unit a few days before their periodic tenancy was to commence on November 15, 2011. Monthly rent was set at \$850.00, payable in advance on the 15th of each month. The landlord continues to hold

the tenants' \$425.00 security deposit paid on November 10, 2011. This tenancy ended on August 15, 2012, when the tenants yielded vacant possession to the landlord.

Although the landlord entered into written evidence copies of a move-in and move-out condition inspection report, it was revealed during this hearing that the landlord did not actually conduct a move-in condition inspection with the tenants. The landlord testified that he walked through the rental unit with the tenants when they first viewed the premises. Over five months later on April 23, 2012, he "filled out the move-in form" for his own records. He did not provide the tenants with a copy of that report until after this tenancy ended.

In the Condition Inspection Report form he entered into written evidence, the landlord signed for both the landlord and the tenant in the "move-out" section of the report. This was for a joint move-out condition inspection completed on August 15, 2012. The parties agreed that the tenant did participate in the first portion of a joint move-out condition inspection on August 14, 2012, but refused to continue with this inspection or sign any report being prepared by the landlord when she found the items he was identifying to her dissatisfaction. The landlord provided the tenants with a copy of this report as part of his written evidence package for this hearing.

The landlord's application for authorization to retain \$270.00 from the tenants' security deposit was for cleaning that the landlord conducted after the tenancy ended. The landlord received estimates from cleaning companies to perform this cleaning. The landlord entered into written evidence a breakdown of the 45 hours spent cleaning and maintaining the rental unit between August 16 and August 19, 2012. He said that he chose to charge only one-half of the time spent on these tasks as some of the time was to conduct repairs that were in excess of the work required to restore the rental unit to its condition prior to the commencement of this tenancy.

The tenant disputed the landlord's claim that the rental unit was dirty and needed extensive cleaning at the end of this tenancy. She testified that she spent an entire 12-hour day cleaning and scrubbing cabinets, floors and appliances. She said that the premises were cleaner at the end of this tenancy than when the tenancy began. She made special references to her cleaning of the fridge and the carpet, two areas where the landlord claimed cleaning was required.

Analysis

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition

between the start and end of a tenancy, joint move-in and move-out condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

In this case, the landlord admitted that no joint move-in condition inspection was conducted and that he did not complete a move-in condition report until the tenants had been living in the rental unit for over five months. Responsibility for completing this report and providing a copy to the tenants in timely fashion rests with the landlord.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

In this case, the landlord did apply for dispute resolution for authorization to retain a portion of the tenants' security deposit within 15 days of the end of this tenancy. The absence of a properly completed move-in condition report or other evidence to compare the condition of the premises at the beginning and end of this tenancy leaves me with little basis to allow the landlord to retain a portion of the tenants' security deposit. The party applying for a monetary award bears the burden of demonstrating entitlement to an award. I find that the landlord has not met that burden and I find that the landlord is not entitled to retain any portion of the tenants' security deposit. I dismiss the landlord's application to retain a portion of the tenants' security deposit. As such, I order the

landlord to return the tenants' security deposit plus applicable interest. No interest is payable over this period.

As the landlord has been unsuccessful in this application, the landlord bears responsibility for his filing fee.

Conclusion

I dismiss the landlord's application for dispute resolution without leave to reapply.

In accordance with section 38 of the *Act*, I issue a monetary Order in the tenants' favour in the amount of \$425.00 to obtain a return of the tenants' security deposit for this tenancy. The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: November 15, 2012

Residential Tenancy Branch

