



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for double recovery of the security deposit. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant, an agent for the tenant and two agents for the landlord participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on May 1, 2005. The tenancy agreement indicates that on May 1, 2005, the landlord collected a security deposit from the tenant in the amount of \$425. The landlord did not provide any evidence to demonstrate that a move-inspection report was carried out at the beginning of the tenancy. The tenancy ended on July 31, 2012. No joint move-out inspection was carried out at the end of the tenancy. The tenant's agent personally gave the landlord the tenant's forwarding address in writing on August 1, 2012. The landlord applied to retain the security deposit on August 29, 2012.

Tenant's Evidence

In June 2012, the tenant was served a notice to end tenancy for cause. The notice indicated that the effective vacancy date of the notice was July 31, 2012. On July 11, 2012 the tenant went into hospital. The tenant's daughter, who also acted as the

tenant's agent, began cleaning and packing the tenant's apartment. The tenant's agent left several of the tenant's items near the dumpster, and planned to have a junk removal company remove any items that were not picked up by other tenants. The tenant's agent contacted the landlord's office on Monday, July 16, 2012, and informed the landlord that they had completed cleaning the apartment and they would be prepared to do the move-out inspection. The landlord stated that they had hired someone to remove the items left outside by the dumpster, and the tenant must immediately pay the bill of \$500. The tenant's agent told the landlord that they had planned to remove the items and had no contact number for the landlord other than the landlord's business office, which was closed on the weekends.

On July 31, 2012, the tenant's agent returned the tenant's keys and asked for the security deposit, which the landlord refused to return. The tenant's agent asked to do a move-out inspection at that time, and the landlord stated that she could not do one at that time. The landlord did not give the tenant any written notices of opportunity to do a move-out inspection.

The tenant disputed the landlord's monetary claim, as the rental unit was old at the beginning of the tenancy; there was no move-in inspection done; the landlord did not provide the age of items that they claimed required repairing or replacing; and the landlord did not provide dated photographs, whereas the tenant's photographs of the rental unit are dated July 17, 2012 and July 30, 2012.

Landlord's Evidence

In regard to the security deposit, the landlord stated that they had a verbal agreement with the tenant that the landlord could keep the security deposit in exchange for assisting the tenant with five major clean-ups over the course of the tenancy.

On July 16, 2012, the landlord attended at the rental building and discovered the tenant's items filling up the recycling and dumpster bins, as well as piled up on either side of the bin, blocking access to parking stalls. The landlord arranged for the items to be hauled away first thing on the following day.

The landlord was not aware until August 1, 2012 that the tenant had moved out and would no longer be living in the rental unit. On that date, the landlord's agent was unavailable to carry out a move-out inspection until 5:00 p.m. The tenant's agent refused to attend at that time. The landlord carried out a move-out inspection in the absence of the tenant or an agent for the tenant.

The landlord has claimed \$567.03 for hauling on July 16, 2012; and \$10,770.01 for cleaning and repairs to the rental unit.

Analysis

Upon consideration of the evidence, I find as follows.

Tenant's Application

I find that the tenant is entitled to double recovery of the security deposit, in the amount of \$850, plus applicable interest on the base amount of the deposit, in the amount of \$15.05. I find that the security deposit was \$425, as set out in the tenancy agreement. In the absence of a written agreement, I do not accept the landlord's testimony that they had an agreement to deduct from the tenant's security deposit during the tenancy, and the landlord did not apply to retain the security deposit. Furthermore, the landlord extinguished their right to claim the security deposit when they did not carry out a move-in inspection and complete a condition inspection report at the outset of the tenancy.

Landlord's Application

I find that the landlord is entitled to the amount of \$567.03 for hauling of the tenant's possessions that were left in the recycling and garbage area. The tenant's belongings ought to have been left in the rental unit or immediately removed by the tenant or his agent, rather than blocking access to parking stalls. I find that the amount claimed by the landlord for immediate removal of these items is reasonable.

I dismiss the remainder of the landlord's monetary claim. The landlord did not do a move-in inspection or complete a condition inspection report at the outset of the tenancy to establish the condition of the rental unit at that time. Further, the landlord did not provide the age of items that were repaired or replaced, to determine the depreciated value of those items.

Filing Fees

As the tenant's claim was partially successful, he is entitled to recovery of partial recovery of the filing fee for the cost of his application, in the amount of \$25.

As the landlord's application was mostly unsuccessful, I find they are not entitled to recovery of their filing fee for the cost of their application.

Conclusion

The tenant is entitled to a monetary amount of \$890.05.

The landlord is entitled to a monetary amount of \$567.03.

I grant the tenant an order under section 67 for the balance due of \$323.02. This order may be filed in the Small Claims Court and enforced as an order 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 16, 2012.

Residential Tenancy Branch