



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$2800.00 which represents double the \$1400.00 security deposit held by the landlord. The tenants are also requesting recovery of their \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$1400.00 for damages cleaning. The landlord is also requesting recovery of her \$50.00 filing fee.

Tenants application

Background and Evidence

The tenants testified that:

- At the beginning of the tenancy they paid a security deposit of \$1400.00.
- They have not given the landlord any permission to keep any of the security deposit.

- The tenancy ended on September 30, 2012 and the landlord was given a forwarding address in writing on that same date.
- The landlord has not returned any of their security deposit, nor did she apply for dispute resolution within the 15 day time frame set out under the Residential Tenancy Act.
- They are therefore requesting an order for the landlord to pay double their security deposit.

The landlord testified that:

- She agrees that this tenancy did end on September 30, 2012 and she did receive a forwarding address in writing from the tenants on that same date.
- She did not apply for dispute resolution within the 15 day time limit because of some issues she was having at the time, and because of her ignorance of the law.

Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get written permission from the tenants to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and did not apply for dispute resolution within the 15 day time frame.

This tenancy ended on September 30, 2012 and the landlord had a forwarding address in writing by September 30, 2012, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenants paid a deposit of \$1400.00, and therefore I allow the tenants full claim for \$2800.00.

I also allow the tenants request for recovery of their \$50.00 filing fee.

Landlord's application

Background and Evidence

Landlord testified that:

- At the end of the tenancy they did a move-out inspection however at the time the lighting was poor the rental unit, and therefore she did not notice some of the damage that existed.
- She did notice a scratch on the front of the refrigerator, and the tenant admitted that the scratch had happened during the tenancy.
- At the end of the inspection she informed the tenant that everything was fine and that the tenants would be getting their security deposit back.
- It wasn't until after the tenant had already left it she noticed that there was some damage to the walls in the rental unit, and that some further cleaning was required.
- She later phoned the tenant and informed her of the damage to the walls, and the need for further cleaning however the tenant refused to accept responsibility.
- The tenant did admit to the damage to the refrigerator but will only agreed to pay for having it touch-up painted however, she does not feel that's a reasonable repair.

The landlord is therefore requesting an order as follows:

Cost to repair and repaint walls	\$975.00
Cost to replace the refrigerator panel	\$247.99
Extra cleaning that was required	\$112.00
Filing fee	\$50.00
Total	\$1384.99

The tenants testified that:

- The landlord did a move-out inspection on the day she moved out, and at that time stated that everything was fine and that they would be getting their security deposit back.
- At the time of the moveout inspection the landlord made no mention of wall damage, and even though she brought a professional cleaning lady through with her, they made no mention of the need for extra cleaning.
- They did not do any damage beyond normal wear and tear to the walls in the rental unit, and they left the rental unit in a very clean condition.
- It wasn't until later when they spoke to the landlord about getting the security deposit back that the landlord suddenly came up with the claim of wall damage and the need for extra cleaning.

- The new tenants started moving in almost immediately after they moved out, and therefore some of this wall damage now claimed by the landlords could have been caused by the new tenants while moving in furniture.
- They don't dispute that the refrigerator was scratched during the tenancy, although they don't know who did it as there were others living in the rental unit as well as them, however they feel the landlords claim to repair it is excessive as it's not a huge scratch/dent and could be easily patched with proper refrigerator touchup paint.
- They do not feel that it's reasonable the landlord should be able to tell them everything is fine at the moveout inspection and then later claim damages of approximately \$1400.00.
- They ask that the landlords claim be dismissed, other than a reasonable amount for painting over the scratch on the refrigerator door.

Analysis

It is my decision that I will not allow the majority of the landlords claim.

I will not allow the claim for wall damage/repair or for extra cleaning, because at the time of the moveout inspection none of this damage or need for extra cleaning was pointed out to the tenants, and in fact the tenants were told that everything was fine.

The purpose of a moveout inspection is to ensure that both the landlords and the tenant have a chance to inspect the unit together and determine whether or not any damages or the need for any cleaning exists at the end of the tenancy.

If the landlord does the inspection and fails to point out any need for further cleaning or repairs, they cannot then come back later and state that the tenant caused damages that were not pointed out, or that the tenants left the rental unit in need of further cleaning.

I will however allow a portion of the claim for the refrigerator scratch, as the tenant has admitted this scratch occurred during their tenancy.

I will not however allow the full amount claimed by the landlord as I believe is unreasonable to replace the whole panel rather than just paint the damage area. I will therefore allow \$25.00 for painting over the damaged area of the refrigerator.

As I have only allow a small portion of the landlords claim, it is my decision that the landlord must bear the cost of the filing fee that she paid for dispute resolution.

Conclusion

I have allowed the tenants full claim of \$2850.00, and I have allowed \$25.00 of the landlords claim. I have therefore set off the \$25.00 against the \$2850.00 and have issued an order for the landlord to pay \$2825.00 to the tenants.

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: January 15, 2013

Residential Tenancy Branch

