



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This was the hearing of an application by the landlord for a monetary order and an order to retain the tenants' security and pet deposits in partial satisfaction of the award. The hearing was conducted by conference call. The landlord's representative and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain the security and pet deposits?

Background and Evidence

The rental unit is an apartment in Prince George. The tenancy began on February 7, 2012 on a month to month basis. Monthly rent was \$650.00, payable on the first of each month. the tenants paid a \$325.00 security deposit and a \$200.00 pet deposit at the beginning of the tenancy.

The landlord testified that the male tenant told her in early October that he was moving on November 1, 2012 and told her to apply his deposits to the rent due for October. She refused and insisted that he pay the rent for October. She said that the female tenant gave her a copy of a Notice ending the tenancy in October. The notice was dated September 26, 2012 and stated that the tenants would move out on November 1st. The landlord submitted several photographs of the rental unit she said that it was not cleaned or left in acceptable condition. In her application she claimed payment of the sum of \$1,175.00. She said that the claim consisted of \$650.00 for unpaid rent for October and the amount of the tenants' deposits as compensation for the cost of cleaning and repairs. The landlord did not submit any documents to establish any costs incurred or expenditures made for cleaning or repairs to the rental unit. She submitted a form of condition inspection report that was dated October 6, 2012, The landlord acknowledged that the tenant did not participate in or sign a move-out inspection form. She said that there was a walk through with the tenant when the

tenancy began and the tenant acknowledged that the rental unit was freshly painted and in great condition but no condition inspection report was prepared when the tenants moved in.

The tenant testified that he saw the landlord on September 26, 2012 and attempted to give her the notice; she refused to accept the notice after he told her to apply his deposits to the amount owing for October's rent.

The tenant said that he moved out on September 30th, not October 6th as stated by the landlord. He said that he tried to contact the landlord to have her perform a condition inspection on September 30th, but she would not participate or was unavailable. The tenant said that there was no condition inspection when the tenants moved in and he said that the unit was not newly painted when he moved in and the carpets were in poor shape. The tenant said he cleaned the carpets when he moved and he left the place cleaner than it was when he moved in. He said that the landlord refused to repair problems in the rental unit such as a broken window and leaking taps. The tenant said that he decided to move out because of the landlord's refusal to perform necessary repairs and because of disturbance from another occupant's barking dog. He said that he was tired of having the landlord swear at him and hang up the phone when he called.

Analysis and conclusion

The onus is on the landlord to prove her claim to retain the security and pet deposits by providing evidence to show first that there was damage to the rental unit and that repairs and necessary cleaning were required and second, to provide documents to establish the cost of necessary cleaning and repairs. The landlord did not provide evidence of any expenditures for cleaning or repairs. There was no condition inspection when the tenants moved in and the tenants deny that they left the rental unit in worse condition than it was when they moved in. I find that the landlord has failed to prove entitlement to any amounts for cleaning and repairs and I dismiss the landlord's claim to retain the deposits on account of cleaning or repairs.

The tenants did not give proper notice to end the tenancy and they did not pay the rent that was due for October. I find that the landlord is entitled to a monetary award in the amount of \$650.00 for loss of revenue for October. Because the landlord was only partially successful on this application, I award the landlord \$25.00 of the \$50.00 filing fee for this application for a total award of \$675.00. I order that the landlord retain the security and pet deposits of \$525.00 in partial satisfaction of the award and I grant the landlord a monetary order under section 67 for the balance of \$150.00. This order may be registered 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: January 08, 2013.

Residential Tenancy Branch

