



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenants security deposit and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 15, 2012 . Mail receipt numbers were provided by the landlord in verbal testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared and gave sworn testimony. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Is the landlord entitled to make a claim to keep all or part of the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on September 01, 2011 for a fixed term of one year. The tenancy ended on September 04, 2012. Rent in the amount of \$2,500.00 was due and payable on the first day of each month and the tenants were also

responsible for two thirds of the utility bills. The tenant paid a security deposit of \$1,250.00 on August 31, 2011.

The landlord testifies that only a walk through inspection of the rental unit was conducted at the start of the tenancy. The inspection was not documented in a report and only a walk through was conducted at the end of the tenancy. The landlord agrees the tenant gave the landlord their forwarding address in writing on October 29, 2012.

The landlord testifies that the tenant failed to leave the rental unit in a reasonably clean manner at the end of the tenancy and failed to clean the carpets as required. The landlord has documented other problems with the tenancy such as the tenant subletting the rental unit without permission for the last month of the tenancy and these sub-tenants had dogs which were not permitted, two rent cheques were bounced and the hydro was cut off due to non payment. The landlord has not made a claim for unpaid rent or hydro.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. However s. 24(2) of the *Act* states:

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.

Based on the above and the evidence presented I find that the landlord did not complete an inspection report at the start of the tenancy. Therefore the landlord has extinguished their right to file a claim to keep the security deposit for damage to the rental unit. This includes any cleaning costs associated with the tenancy. I also find that as the landlord did receive the tenants forwarding address in writing on October 29, 2012 the landlord had until November 13, 2012 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit.

The landlord's application is therefore dismissed without leave to reapply for the security deposit.

As the landlord has been unsuccessful with this claim I find the landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

This does not preclude the landlord from filing any further claims against the tenant for damages.

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: February 12, 2013

