



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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 tenants, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for an order for double the \$587.50 security deposit for a total of \$1175.00, and a request for recovery of the \$50.00 Filing Fee.

The landlord's application is a request for a monetary order for \$1812.50 and a request for recovery of the \$50.00 filing fee.

Tenants application

Background and Evidence

This tenancy began on December 15, 2011 and the security deposit of \$587.50 was paid on November 24, 2011.

This tenancy ended on August 29, 2012, and to date the landlord has not returned any of the security deposit.

The applicant's testified that they have not given the landlord a forwarding address in writing.

Analysis

The tenant(s) have applied for the return of double their security deposit; however the tenant(s) did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant(s) applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature and I will not be issuing an order for double the security deposit.

The security deposit however is dealt with in the landlord's application below.

Landlord's application

Background and Evidence

The Landlord testified that:

- This tenancy was scheduled to end on August 31, 2012, however the tenants interfered with their right to show the rental unit to prospective tenants, and as a result they lost the full rental revenue for the following month of September 2012.
- They made many attempts by e-mail and by posting notices on the door to arrange showings; however they were met with hostility and a lack of cooperation.
- As it turned out, they were thankful that they were unable to re-rent the unit as the unit was left in a very dirty condition at the end of the tenancy, and it would've been very difficult to have the unit ready for new tenants.
- It took two of them three days to clean the rental unit and they also had to have the carpets professionally cleaned. (Photos attached)
- The tenants also left a large amount of garbage behind which had to be removed to the landfill.
- The tenants also refused to attend the move-out inspection and as a result the move-out inspection was conducted on their own without the participation of the tenants.

The landlords are therefore requesting a monetary order as follows:

Lost rental revenue for September 2012	\$1175.00
Carpet cleaning	\$148.96
General cleaning (their time)	\$438.54
Filing fee	\$50.00
Total	\$1812.50

The tenants testified that:

- They did not interfere with the landlord's right to show the rental unit, and in fact even showed the unit for the landlord on occasion.
- The landlord seemed to think they had the right to enter at any time they wanted and gave very short notice.
- They attempted to cooperate with the landlord however there were times that it was inconvenient on such short notice to be able to allow the landlord access to show the unit.
- They also deny leaving the rental unit dirty.
- They rented a carpet cleaner and clean all the carpets in the rental unit, and they thoroughly cleaned the full rental unit. (Photos attached)
- Further we did not leave a large amount of garbage behind, garbage removal was included in the tenancy agreement however the landlord did not remove it every week and therefore the large amount of garbage was probably the buildup they had stored to avoid paying municipal garbage costs.

Analysis

It is my finding that the landlord has not met the burden of proving that the tenants interfered with their rights to show the rental unit to prospective tenants, and in fact it appears that was the landlord that was not complying with the rules of the Residential Tenancy Act.

The landlord gave the notices to enter to the tenant by e-mail, or by posting on the door of the rental unit however in most of those cases the landlord did not give the required amount of time in those notices.

The Residential Tenancy Act states that the landlord must give 24 hours written notice if they wish to enter the rental unit, and e-mail is not considered proper written notice, and therefore none of the e-mail notices comply with the notification requirement.

Further the notices that were posted on the door were posted on the same date that the landlord was for requesting entry and therefore did not give the required 24 hours notice. On top of that notices that are posted on the door are not considered served for three days and therefore the landlord was requesting entry far sooner than allowed under the Residential Tenancy Act.

I therefore will not allow the landlords claim for loss rental revenue.

I also deny the landlords claim cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

Having viewed both the photos of the landlord and the photos of the tenants, I find that the tenants left this rental unit reasonably clean.

Further although the landlord claims to have given the tenants a second opportunity to schedule a move-out inspection in the approved form, the landlord has supplied no copy of that form, and therefore I have no way of confirming that the landlord has complied with the requirements of the Residential Tenancy Regulations.

Conclusion

The landlord's application is dismissed in full without leave to reapply and I've issued an order for the landlord to return the full security deposit of \$587.50 to the tenant's.

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: March 15, 2013

