



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Austerville Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order and an order to return the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to the return of the security deposit?

Background, Evidence and Analysis

The tenancy began on April 1, 2012 and ended on August 31, 2012. The tenancy was to be for a fixed term of one year and was to expire on March 31, 2013. The tenants were obligated to pay \$1575.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$777.50 security deposit.

I address the tenants' claims and my findings around each as follows.

First Claim – The tenant is seeking \$500.00. The tenant stated that he paid \$500.00 in liquidated damages. The tenant and the landlord agreed that the tenant “broke the lease” early and that both parties had signed the contract at the start of tenancy with

this clause. The tenant initially agreed to this cost but six months later decided he no longer agreed with it and wants the money back. The tenancy agreement clearly reflects the liquidated damages cost if the tenancy is to end prematurely due to the tenant. The tenant acknowledges this in his testimony. I do not accept the tenants' argument on this point and dismiss this portion of the tenants' application.

Second Claim – The tenant is seeking the return of his security deposit. The tenant stated that neither a move in or move out condition inspection was conducted. The landlord stated that the inspection was done in the building managers' office. The building manager stated that they do not normally do them in the units with the tenants as they have the units in "perfect" condition each and every time a new tenant moves in. The manager advises the tenants to go to the suite and if they have any issues to come back to the office and note it on the condition inspection sheet. The tenant denies that he was given that opportunity. The landlords stated that the tenant had left the unit dirty and that they incurred costs to clean and conduct some minor painting and repairs. The landlords did not provide any receipts for the costs incurred for this hearing. Sections 23 and 24 of the Act address this issue.

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- (b) a previous inspection was not completed under subsection (1).

- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
- (b) the tenant has not participated on either occasion.

(2) **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.

The landlord did not conduct the inspection “together” with the tenant and therefore distinguished any claims to retain the deposit. I find that the tenant is entitled to the return of the security deposit of \$777.50.

The tenant has been successful in his application and is entitled to the recovery of the \$50.00 filing fee.

Conclusion

The tenant has established a claim for \$827.50. I grant the tenant an order under section 67 for the balance due of \$827.50. 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: April 24, 2013

Residential Tenancy Branch