



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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 and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an Order to keep the full security deposit of \$462.50.

Background and Evidence

This tenancy began on December 15, 2011 and ended on February 28, 2013.

At the beginning of the tenancy the tenants paid a security deposit of \$462.50.

At the end of the tenancy a move out inspection form was completed and signed by both the landlord and the tenant, and on that form it does not state that the tenants are responsible for any damage to the rental unit.

The landlord is now claiming that a proper move out inspection was not done because the male tenant was being very aggressive and therefore she did not properly fill out the form, rushing through it just so she could get him out of the house.

The landlord claims that after the tenant left the rental unit she did a new move out inspection report without the tenants present and that report shows that an extensive amount of cleaning and repairs was required, at a cost of more than \$800.00.

The landlord is not claiming the full amount; however the landlord is requesting an Order to keep the full security deposit of \$462.50 to cover at least a portion of her costs.

The tenants adamantly deny that it was they who were the aggressive ones, and in fact they claim that it was the landlord's husband who started the aggressive behavior and abusive, foul language.

The tenants also claim that the landlords tried to get them to leave without doing a move out inspection report however it was they who insisted on staying to the end and completing the move out inspection report.

The tenants further state that the move out inspection report therefore was fully completed and signed off by both themselves and the landlord, and they believe the landlord should be bound by that report which they did together, although they admit that they did agree to a \$50.00 deduction from the security deposit.

The witness for the landlord stated that she did see the male landlord and male tenant arguing, however she also stated that she was unable to hear what was being said and therefore cannot confirm whether or not the parties were swearing at each other. She did state however that it did appear that the male tenant was the one being the most aggressive.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is my finding that the landlords have not met the burden of proving that the tenants made it impossible for them to properly complete a move out inspection report. It is basically just their word against that of the tenants as to who was the aggressor and that's not sufficient to meet the burden of proof.

Further the witnesses testimony is of little use, as she has stated that she could not hear what was being said between the parties when they were arguing.

Therefore it's my finding that the landlords are bound by the move out inspection report that was done together with the tenants, and signed by both themselves and the tenants.

I therefore will not allow the landlords request to retain the security deposit other than the \$50.00 that the tenants have already agreed to.

Conclusion

I allow the landlords to retain \$50.00 of the tenant's security deposit and the remainder of their claim is dismissed without leave to reapply.

I have issued an Order for the landlords to return the remainder of the tenant's security deposit in the amount of \$412.50 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: May 29, 2013

Residential Tenancy Branch

