



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNN, OPB

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. AN Order of Possession – Section 55;
2. A Monetary Order for damages to the unit - Section 67; and
3. An Order to retain the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

Although the Landlord applies for an order of possession, the application also notes that the Tenant moved out of the unit. This was confirmed during the hearing. As a result, I dismiss the Landlord’s claim for an order of possession. During the Hearing the Landlord referred to 11 pages of evidence that was not in front of this arbitrator. The Tenants confirmed receipt of this evidence. The Landlord was given opportunity to provide the Residential Tenancy Branch with a copy of this evidence by fax immediately following the conclusion of the hearing.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain any part of the security deposit?

Background and Evidence

The tenancy started on August 1, 2011 and ended on February 28, 2012. Rent of \$2,100.00 was payable monthly. At the outset of the tenancy, the Landlord collected \$1,050.00 as a security deposit.

The Landlord states that the Parties completed a move-in inspection and that the unit was noted to be in good condition within the tenancy agreement. No copy of a condition inspection report was provided to the Tenants. No move-out inspection was conducted and the Landlord states that they did not know how to contact the Tenants who moved out without providing a forwarding address or contact information. The Landlord states that they received the Tenant's forwarding address on February 13, 2013.

The Tenant states that no move-in inspection was done and that the unit was unclean and damaged at move-in. The Tenant states that the Landlord was well aware of the location of the Tenant at their place of business as during the tenancy the Landlord would come there to pick up rent cheques.

The Landlord states that the Tenants damaged the laminate on the stairs that was new at move-in. The Tenant states that the stairs were laminated during the tenancy and that the work was done poorly leaving nails protruding. The Tenant states that they asked the Landlord to repair the stairs but that the Landlord never did.

The Landlord states that the Tenants damaged the garbuerator and left the toilet with a leak. The Tenant states that they did not know there was a garbuerator and as a result it was never used during the tenancy. The Tenant states that there was no leak in the toilet during the tenancy and that had there been, it would have been noticed.

The Landlord states that the Tenants failed to leave the unit clean at move-out, in particular the kitchen was not cleaned and the windows were not cleaned. The Landlord states that it took two cleaners three hours to complete the cleaning. The Tenant states that the unit was cleaner at move-out than at move-in and that the kitchen

was fully cleaned including under the fridge. The Tenant states that the Landlord was selling the unit and that the repairs claimed are not the cause of the Tenants.

The quantum of the Landlord's claim is \$1,098.00.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Given that no copy of a move-in inspection report was provided as evidence and considering the Tenant's evidence that no move-in inspection was conducted or form completed, I find that such an inspection and report was not done and that the Landlord's right to claim against the security deposit for damages to the unit is therefore extinguished. I order the Landlord to return the security deposit of **\$1,050.00** plus zero interest to the Tenants forthwith.

Given the lack of a move-in condition report, lack of photos of the damaged areas being claimed and considering the Tenant's evidence that the unit was clean and without damages at the end of the tenancy, I find that the Landlord has failed on a balance of probabilities to substantiate any of the claims for damages to the unit. As the Landlord has not been successful with any of its claims, I dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,050.00**.

If necessary, 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: May 21, 2013

Residential Tenancy Branch