



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MND

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the hearing documents to the Tenant by registered mail on May 25, 2013. The Tenant said she only received the Notice of Hearing and she does not know what the Landlord applied for or what evidence the Landlord has to support her claims. I find the Landlord has not service the Tenant in accordance with the Act and regulations.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on June 8, 2013, in accordance with section 89 of the Act.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on June 1, 2011 as a one year fixed term tenancy and then continued on a month to month tenancy. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on May 1, 2011.

The Tenant said she moved out of the rental unit on February 28, 2013 and gave the Landlord her written forwarding address on March 28, 2013. The Tenant continued to say that no move in or move out condition inspections were done and she kept the unit in good condition throughout the tenancy. The Tenant said on move in the carpets smelled of pet urine and there were a number of stains on the carpets in the bedroom and in the living room in a corner. The Tenant said the unit was in good condition when she moved out and she agreed to deduct the carpet cleaning from her security deposit.

The Tenant said she has not received her security deposit back and as a result she was told by the Residential Tenancy Branch, that she could apply for double the security deposit according to the Act. The Tenant said she is requesting 2 X \$700.00 or \$1,400.00 as well as the filing fee for this proceeding of \$50.00.

The Landlord said the Tenant was a good tenant throughout the tenancy, but the carpets were dirty and stained when the Tenant moved out. The Landlord said she cleaned the carpets at a cost of \$134.40 and then was told that the stains would not come out and the carpets would have to be replaced. The Landlord submitted an estimated of \$1,120.00 for the replacement of the carpets in the rental unit. The Landlord said the carpets have not been replaced to date as she was waiting for the outcome of this hearing. The Landlord continued to say that she include photographs to show the stains in the carpets. The Landlord said no move in or move out reports were completed and signed.

The Landlord said in closing that she kept the Tenant's security deposit because of the damage to the carpets and it is unfair that the Tenant has applied for double her security deposit to be returned to her.

The Tenant said in closing that she was a good tenant and left the unit in better condition than when she moved into the unit.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has established the carpet is in poor condition, but the Landlord has not established grounds to prove the Tenant caused all or any of the damage. I dismiss the Landlord's claim for damages due to lack of evidence. The Landlord's application is dismissed without leave to reapply.

Further Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenant's security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord has no claim against the Tenant's security deposit for damages.

With respect to the Tenant's application for double her security deposit in the amount of 2 X \$700.00 or \$1,400.00 in total.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony and written evidence that she did give the Landlord a forwarding address in writing on March 28, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution to retain the Tenant's security deposit by April 12, 2013. The Landlord did apply on March 21, 2013 for damage to the unit, but no mention was made about retaining the Tenant's security deposit in the application. As well the Landlord did not serve the Tenant with the Landlord's application or the Landlord's evidence package. Consequently I find for the Tenant and award double the security deposit of \$700.00 in the amount of \$1,400.00.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord.

Further as the Tenant agreed to deduct the carpet cleaning of \$134.40 from her security deposit I reduce the Tenant's award by the amount of the carpet cleaning cost as follows:

A monetary order has been issues to the Tenants for the following:

	Double Security deposit	\$ 1,400.00
	Filing fee	\$ 50.00
	Total	\$ 1,450.00
Less	Carpet Cleaning Costs	\$ 134.40
	Total	\$ 134.40
	Balance owing to the Tenant	\$1,315,60

Conclusion

A monetary order has been issued to the Tenant in the amount of \$1,315.60

The Landlord's application is dismissed without leave to reapply.

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: June 19, 2013

Residential Tenancy Branch

