



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MND, MNDC, MNSD, FF

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 loss or damage under the Act, regulations or tenancy agreement, for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

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

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on June 10 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on April 9, 2013, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

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?
3. Is there loss or damage to the Landlord and is the Landlord entitled to compensation for the loss or damage?
4. Is the Landlord entitled to retain the Tenant's deposit?

Tenant:

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

Background and Evidence

This tenancy started on December 1, 2009 as a month to month tenancy. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on November 15, 2009.

The Tenant said they gave Notice to the Landlord on January 27, 2013 that they were moving out of the rental unit on February 28, 2013. The Landlord confirmed that she received the Tenant's Notice to End the tenancy in late January, 2013. The Tenant continued to say there were no move in or move out condition inspection reports completed and signed by the parties. The Tenant said he has not received his security deposit back and as a result he was told by the Residential Tenancy Branch, that they could apply for double the security deposit. The Tenant said he is requesting 2 X \$600.00 or \$1,200.00 as well as the filing fee for this proceeding of \$50.00.

The Landlord said the Tenant left the rental unit in poor condition with damage to the unit and the unit needed painting. The Landlord said the painting of the unit cost \$3,646.49 and she included the receipt for the work. The Landlord continued to say the unit was painted 8 years ago and was touched up 3 years ago.

As well the Landlord said she has included estimates for addition damage the Tenant caused to the rental unit. The Landlord said the wood floors need refinishing at an estimated cost of \$1,779.75, the counter tops need to be replaced as a result of a burn mark at an estimated cost of \$990.15, the yard needs re-soding at an estimated cost of \$694.40 and a door needs to be replaced at an estimated cost of \$392.00. The Landlord said she has another tenant in the unit presently and so the repair work has not been done.

In addition the Landlord said she is requesting lost rental income for March, 2013 of \$1,300.00 as the rental unit was not ready to rent when the Tenant moved out because

of the condition of the unit. The Landlord believes they lost one month's rent because of the cleanup and repairs that had to be done to the rental unit.

The Landlord said she submitted a detailed evidence package that explains her claims and she did not want to explain the claims in detail again on the conference call. The Landlord did submit 28 photographs to support the claims and a letter from a Realtor and the previous tenant to establish the condition of the unit prior to the Tenant moving in.

The Tenant said the rental unit is approximately 80 years old and needs repairs. The Tenant continued to say that the floors were scratched and had screw holes in them when they moved in and the wall were not in good shape on move in as well. The Tenant said they left the unit in as good a condition as it was in when they moved in.

Analysis

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 for damages is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenant's security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenant's security deposit.

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 I do not accept the evidence of the Landlord to establish the condition of the unit at move in because it is not in sufficient detail and was not agreed to by the Tenant. The photographs do show damage, but there is no definitive proof that the Tenant caused the damage and that the damage was not normal wear and tear. The Landlord has not established a base line to determine if any damage was caused by this tenancy or if damage was caused what amount of the damage was the Tenant's responsibility. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.

2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has shown by photographic evidence there was damage to the floors and walls the Landlord has not established to what extent the damage was caused by the Tenant. As well the tenancy started in 2009 therefore what part of the damage is normal wear and tear. Without a move in and move out condition inspection report signed by both the Landlord and the Tenant it is not possible to determine what damage occurred and whether it was normal wear and tear or actual damage.

Therefore the Landlord has not established grounds to prove her claim. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy and that the Landlord did not provide evidence that verify the claims she was making. Consequently I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the Landlord's claim for lost rental income the Landlord accepted the Tenant's Notice to end the tenancy on January 27, 2013 for February 28, 2013; therefore the Tenant gave the Landlord proper Notice and the tenancy ended on February 28, 2013. The Landlord said they rented the unit out with only painting the unit which is normal for a rental unit that has not been painted for 8 years. I do not accept that the perceived damage delayed the rental of the unit therefore; I dismiss the Landlord's claim for lost rental income of \$1,300.00 without leave to reapply.

With respect to the Tenants' application for double their security deposit in the amount of \$1,200.00.

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 Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on January 27, 2013. The Landlord did not repay the 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 by March 15, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$600.00 in the amount of \$1,200.00 (2 X \$600.00).

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlord to bear the \$100.00 filing fee for her application, which she has already paid.

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

Double Security deposit	\$ 1,200.00
Filing fee	\$ 50.00
Total	\$ 1,250.00

Conclusion

The Landlord's application for damages and to retain the Tenants' security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenant for \$1,250.00.

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 24, 2013

Residential Tenancy Branch