



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

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

Is the tenant entitled to compensation for damage or loss under the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

This tenancy commenced on March 1, 2011; rent was \$1,750.00 per month, due on the 1st day of each month. A security deposit in the sum of \$880.00 was paid.

The landlord supplied copies of the tenancy agreement, the move-in condition inspection report, photographs of the unit and an agreement signed on August 14, 2012, in which the tenant relinquished the security deposit to the landlord.

The tenancy ended on July 31, 2012. The tenant had declined an offer to complete the inspection on July 31, 2012 and agreed to meet the landlord on the morning of August

1, 2012. Several minutes prior to the scheduled inspection the tenant sent the landlord a text message saying he could not attend. The landlord said he told the tenant he would be at the unit until midnight as the unit had to be prepared for the next occupant; the tenant did not attend. The tenant said he offered to meet on August 2, 2012.

On August 14, 2012 the parties signed a detailed agreement that listed the costs to the landlord for damage caused by the tenant. The damages, after the deposit was taken into account, resulted in a loss to the landlord of \$413.13. The parties reached agreement that the tenant would pay the landlord an additional \$240.00. The agreement stated that the tenant had reviewed the letter and attached documents and that he agreed to the deposit assessment.

The landlord's copy of the agreement was initialed by the tenant. The tenant's copy supplied as evidence indicated that the landlord had received \$240.00 in cash from the landlord for settlement of the damage deposit.

The tenant is upset as the landlord has not provided him with a receipt for replacement of the kitchen cabinet which was estimated to cost \$716.80. The landlord said they will replace the cabinets at some point, but chose not to complete that repair yet as the new occupant already had a delay in move-in. The landlord has chosen to leave the repair for a future time.

There was no dispute that the tenant caused damage to the rental unit.

The tenant was provided with repeated opportunity to make submissions and repeated his frustration at the landlord's failure to make the kitchen cabinet repair.

Analysis

A landlord must offer a tenant at least 2 opportunities to complete a condition inspection. I find that this did occur; the tenant chose not to attend on July 31, 2012, the final day of the tenancy when he should have vacated, and agreed to meet the next morning. The tenant then failed to meet with the landlord at the agreed upon time.

When a tenant fails to meet with a landlord, after the tenant has proposed a time to complete an inspection section 36 of the Act determines that the tenant then extinguishes their right to return of the security deposit. The tenant had been offered a time on July 1 and then agreed to meet on August 1.

In this case the tenant met with the landlord and signed a mutual agreement, allowing the landlord to retain the deposit. The tenant also paid an additional \$240.00 for damage costs that exceeded the deposit.

Section 38(4) of the Act provides:

4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

Therefore, as the tenant signed, allowing the landlord to retain the deposit I find that the matter in relation to the deposit was settled. The tenant is now attempting to revisit the issue of the deposit; however, pursuant to section 62(3) of the Act, I find that the deposit has been properly retained and the landlord's obligations have been satisfied, in accordance with the Act.

In relation to the tenant's insistence that the landlord complete the cabinet repair and provide a copy of the invoice; I find that is completely at the discretion of the landlord. The landlord is free to decide when the repair may be made. What is particularly important is the fact that the tenant caused damage to the unit and a resulting loss of value to the unit; this was acknowledged by the tenant when he signed the damage deposit agreement.

Therefore, I find that the tenant's application is dismissed.

Conclusion

The application is dismissed.

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: July 26, 2013

Residential Tenancy Branch

