



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MND

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a Monetary Order for return of double the \$700.00 security deposit for a total of \$1400.00 and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a Monetary Order for \$1500.00, and recovery of the \$50.00 filing fee. The landlord is also requesting an order allowing her to keep the full security deposit of \$700.00 towards the claim.

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

Tenant's application

Is the tenant entitled to an order for return of double the \$700.00 security deposit for a total of \$1400.00?

Landlord's application

Is the landlord entitled to a Monetary Order for \$1500.00 for damages and cleaning?

Tenant's application

Background and Evidence

The tenant testified that:

- The landlords did not do a move in inspection report at the beginning of the tenancy and therefore the landlord does not have the right to claim against the security deposit for damages.
- The landlord at the time did not even offer to do a move in inspection report.
- He is therefore requesting an order that the landlord returned double his security deposit, as the landlord did not return the deposit within the 15 day time limit set out in the Residential Tenancy Act.

The landlord testified that:

- The tenant was given two opportunities to do the move in inspection report by the previous landlord; however the tenant failed to participate on either occasion.
- It is therefore the tenant that has failed to comply with the requirements of the Residential Tenancy Act and this claim should therefore be dismissed.

Witness for the landlord testified that:

- He was the landlord at the time that the above tenant moved into the rental unit.
- He intended to do the move in inspection report with the tenant when the tenant came to receive the keys at the beginning of the tenancy, however the tenant did not appear and therefore the report was not done.
- He also returned the next day hoping to find the tenant there and brought a copy of the report with him, intending to fill it out if the tenant was present however again the tenant was not present.
- No report therefore was ever filled out at the beginning of the tenancy.
- He does not recall for sure whether or not he had made arrangements with the tenant to do the move in inspection report prior to the tenants moving in, and he never gave the tenants any written final opportunity to do the inspection.

Analysis

It's my finding that the landlord at the beginning of this tenancy failed to comply with the requirement to do a move in inspection report, and by failing to do so, pursuant to Section 24(2) of the Residential Tenancy Act, the landlord's right to claim against the security deposit for damages has been extinguished.

Therefore in this case, since the landlord's right to claim against the security deposit had been extinguished, the landlord was required to return the security deposit within 15 days of receiving a forwarding address in writing.

At the hearing the landlord admitted that she received a forwarding address in writing by e-mail on March 7, 2013, and although e-mail is not a recognized method of service of

documents under the Residential Tenancy Act, the document is considered to have been received if the party admits to receipt of that e-mail, which is the case here.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and although she did file for dispute resolution within the 15 day time frame, she did not have the right to claim against the security deposit for damages, and therefore was required to return the deposit.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$700.00, and therefore the landlord must pay \$1400.00.

Further section 93 of the Residential Tenancy Act states:

93 The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.

Therefore even though the security deposit was paid to the original landlord, the obligations regarding the security deposit transferred to this landlord when she became the landlord of the rental property and therefore it is this landlord that must pay the \$1400.00.

I also allow the request for recovery of the \$50.00 filing fee paid by the tenant.

Landlord's applicationBackground and Evidence

The landlord testified that:

- At the beginning of the tenancy there were no damages to the rental unit, however when the tenants vacated there were significant damages and the rental unit was in need of significant cleaning.
- The screen in the rental unit had been bent in half and broken and had to be replaced.
- The remote controls for the air-conditioner/furnace, and for the two fireplaces were not working and as a result they had to be repaired at significant cost.
- The repairman found the remote controls damaged, and the receivers on the fireplaces were both missing.
- They also found the two grease filters from their microwave oven both missing and as a result they had to be replaced.
- There was a shelf missing from the refrigerator and it had to be replaced.
- The tenants left a significant amount of garbage behind, both in the garbage bin and the recycling bins and as a result those had to be removed to the dump.
- The tenant had attempted to clean the carpets however the carpets were left very wet and were still very dirty as is evidenced in the photos. As a result the carpets had to be cleaned as well.
- The tenants also left the rental unit in need of 20 hours of general cleaning.
- The tenants also left large holes in the drywall and as a result those holes had to be fixed and repair.

They are therefore requesting a Monetary Order as follows:

Replace damaged screen	\$46.20
Repair damages to air-conditioner/furnace remotes, and fireplace remotes/receivers	\$747.15
Replace microwave grease filters	\$56.00

Replace missing refrigerator shelf	\$31.35
Dump fees	\$10.00
Carpet cleaning	\$100.00
General cleaning 20 hours X \$15.00	\$300.00
Drywall repair	\$200.00
Filing fee	\$50.00
Total	\$1540.70

The tenant testified that:

- The damages claimed by the landlord did not exist at the end of the tenancy, and therefore must have occurred after the tenancy ended.
- They left the rental unit completely clean and undamaged.
- Further they never removed anything from the fireplaces.

Analysis

I find it highly unlikely that the damages to this rental unit were caused after the tenant vacated the rental unit.

The tenant claims that when he left the rental unit it was clean and that no damages existed however it's my finding "on the balance of probabilities" that the damages to the rental unit most likely did exist at the end of the tenancy.

The landlords claim was filed 12 days after the tenancy ended and I find it very unlikely that all these damages could have occurred in that short time frame.

Further, the landlord supplied photo evidence clearly indicates this rental unit was left in need of significant cleaning and repairs and I also find it very improbable that this rental unit could have deteriorated so significantly within 12 days of the end of the tenancy.

Is my decision therefore that I will allow the full amount claimed by the landlords for cleaning and repairs.

I also allow the landlords request for recovery of the filing fee she paid.

Conclusion

I have allowed the tenants full claim of \$1450.00, and have allowed the landlords full claim of \$1540.70. I have therefore set off the tenants claim against the landlords claim and I have issued a Monetary Order for the difference of \$90.70.

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 10, 2013

Residential Tenancy Branch

