



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for the cost of cleaning, repairs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord stated that he served the tenant with a copy of his evidence on November 07, 2013 by leaving the package at the front door. The tenant stated that he did not receive the package.

Issues to be decided

Was the tenant served with the landlord's evidence? Is the landlord entitled to a monetary order for the cost of cleaning, repairs and for the recovery of the filing fee?

Background and Evidence

The tenancy started on November 01, 2009 and ended on August 31, 2013. The monthly rent was \$850.00 and prior to moving in the tenant paid a security deposit of \$425.00.

On the day the tenant moved out, he met the landlord at the rental unit and returned the keys. The landlord completed a portion of the move out inspection report and filled out the section in which the tenant agreed to a \$100.00 deduction for cleaning. The tenant signed it in agreement. The landlord filed a copy of the report

The landlord stated that the tenant agreed to return later that night to fill out the remainder of the report but did not show up. The landlord proceeded to complete a move out inspection of the premises and filled out the balance of the report. The amount of \$100.00 was changed to \$2,232.00 for cleaning and damages. The landlord filed photographs and receipts to support his monetary claim.

Analysis

Section 88 of the *Residential Tenancy Act* addresses how to give or serve documents. The purpose of serving evidence under the Legislation is to notify the person being served of matters relating to arbitration.

Pursuant to section 88 of the *Residential Tenancy Act* documents may be served by attaching the package to a door or other conspicuous place at the address at which the person resides. In this case the landlord testified that he left the package at the front door and did not state that he had attached the evidence package to the door. The tenant stated that he had not received it.

The landlord made application on September 13, 2013 and accordingly had adequate time to serve the tenant by registered mail, prior to this hearing on November 19, 2013, but chose to serve it on November 07, 2013 by placing the package near the front door.

In this case, the tenant denied having received the landlord's evidence and the landlord did not have any proof of service. Therefore I find that the tenant did not receive a copy of the landlord's evidence and was not given an opportunity for rebuttal. Accordingly, I am not able to use the landlord's evidence in the resolution of this dispute.

The tenant agreed to having in his possession a copy of the move out inspection report that he had signed which stated that he agreed to a deduction of \$100.00 for cleaning. This document is part of the landlord's evidence and therefore will be used in the making of this decision.

The landlord stated that he had not signed that initial move out inspection report as it was incomplete. He stated that even though the tenant agreed to a \$100.00 deduction, he, the landlord, had not agreed to it. The landlord confirmed that he had filled out the report and that the entry regarding the \$100.00 deduction was written by him.

The move out inspection report is an instrument created by the landlord. The landlord filled out the report and therefore cannot at a later time take the position that it is not binding. The landlord also cannot alter the report to increase his claim, after it is signed by the tenant.

The tenant disputed the balance of the landlord's claim as he had not received the evidence to support the claim and accordingly did not have an opportunity to prepare his rebuttal. Since the landlord has not proven service of his evidence on the tenant, I am unable to use this evidence to consider the landlord's claim and accordingly, it is dismissed. However, I find that the landlord is entitled to \$100.00 for cleaning as noted on the move out inspection report signed by the tenant.

Since the landlord has not proven the remainder of his claim, he must bear the cost of filing his application.

I order that the landlord retain \$100.00 from the deposit of \$425.00 and return the balance to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord may retain \$100.00 from the security deposit and must return \$325.00 to the tenant within 15 days of receipt of this decision. The remainder of the landlord's 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: November 19, 2013

Residential Tenancy Branch

