



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MND

Introduction

This hearing dealt with cross applications. The landlord is seeking an order to retain the security deposit. The tenant has filed an application seeking the return of double her security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background Evidence & Analysis

Both parties agree to the following:

The tenancy began on October 1, 2012 and ended on October 1, 2013. The tenants were obligated to pay \$825.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$400.00 security deposit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with each application and my findings as follows:

Landlords Claim – The landlord is seeking to retain \$250.00 from the security deposit. The landlord stated the tenant had damaged the door to the suite and seeks the costs to repair it. The tenant disputes this claim. The tenant stated that she did not damage

the door. The landlord stated that they had done “walk thru” report at the beginning of the tenancy and had the tenant “sign on the lease”. The tenant disputes that a condition inspection report in writing was conducted at the beginning or end of tenancy.

Section 23 of the Act addresses the issue as follows:

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

The landlord did not provide a condition inspection report or any other supporting documents to help provide a “snapshot” of the unit from the beginning of tenancy versus the end of tenancy and the changes, if any. The landlord did not provide photos or receipts to depict the alleged damage. Based on all of the above I dismiss the landlords’ application.

Tenants Claim – The tenant stated that she is seeking the return of double her deposit as the landlord has not complied with Section 38 of the Act. The tenant stated that she provided her forwarding address in writing on October 2, 2013. The landlord did not dispute this portion of the tenants' testimony but felt that she was responsible for the damage in the suite.

Section 38 of the Act addresses this issue as follows:

Section 38 (1) 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.

The tenant provided her forwarding address on October 2, 2013; the landlord did not file an application for dispute resolution until November 15, 2013. The landlord is outside of the legislated timelines as outlined above. I find that the tenant is entitled to the return of double her deposit.

The tenant is also entitled to the recovery of the \$50.00 filing fee.

Conclusion

The tenant has established a claim for \$850.00. I grant the tenant an order under section 67 for the balance due of \$850.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed in its entirety.

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: January 30, 2014

Residential Tenancy Branch

