



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for return of double the security deposit. Both parties appeared and had an opportunity to be heard.

The landlord had filed evidence in support of a claim for damages against the security deposit but had not made a formal application for dispute resolution for a monetary order. Both parties expressed a desire to have all issues between them resolved at this hearing. Accordingly, I heard evidence and will render a decision on the landlord's claim for damages as well as the tenant's claim for return of the security deposit.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced June 15, 2012. The monthly rent of \$1350.00 was due on the first day of the month. The tenants paid a pro-rated rent for June. The tenants paid a security deposit of \$675.00 at the start of the tenancy. A move-in inspection was not conducted and a move-in condition inspection report was not completed.

In June of 2013 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use. The effective date of the notice was August 31, 2013.

On June 25 the landlord sent the tenants an e-mail which stated: "I just want to let you and Bill know that I won't start any work on the upstairs until after August 31st. Candice made it clear that the upstairs needs work so I'll be tearing out pretty much everything except the kitchen."

The tenants found a new place in a different community and were able to start moving in mid-August. The tenants testified that this was a big move for them and they were doing the move themselves.

On August 14th the landlord e-mailed the tenants asking if they would be out before the 31st or on the 31st of the month. The tenants wrote back that they were hoping to move

on the weekend of the 24th-25th and that they were hoping to come back to the house to clean on the 26th or so. On August 25th the landlord e-mailed the tenants asking how things went on the weekend, and advising that she was away that week and her friend would be by to view the unit and collect the keys.

The landlord testified that when she did not receive a response to her e-mail she arranged with her realtor to have cleaners come to the rental unit. The invoice for cleaning is dated August 29 and is in the amount of \$278.25. The landlord testified that she had not received the keys by August 29.

The tenants testified that when they went to the rental unit on August 30 they found that the cleaning supplies and personal papers they had left in the unit were gone; some cleaning had already been done; a cleaning person was working; a contractor was working on the stairs; and their possessions were sitting in the yard.

They contacted the landlord's friend and after some time he arrived. The male tenant testified that he completed a condition inspection report before the friend arrived and he asked the friend to have a look around. The friend said he did not have time. The tenant testified that their forwarding address was on the condition inspection report that he gave to the landlord's friend. They gave the friend the keys and finished moving the balance of their items.

The landlord testified that the address was not on the move-out inspection and that she did not know the tenants' forwarding address until she received this application for dispute resolution.

A copy of the move-out condition inspection report was not filed in evidence nor did the landlord friend testify.

The landlord claims the cost of removing the carpet from the front stairway and sealing the stairs, which were left with the painted finish. The landlord said the issue was that the carpet smelled of pet urine. She also testified that the carpet was 1.5 years old at the start of this tenancy.

The tenants testified that the carpet was stained when they moved in that they successfully cleaned it several times during their tenancy. They also testified that it had been raining heavily the previous weekend when they were moving so the carpet had gotten quite dirty.

The landlord claims \$364.27 for debris removal. The tenants say they moved all of their possessions and the items under the deck were there or in the shed at the start of their tenancy. The landlord testified that as far as she knew there was nothing under the deck or in the shed at the start of this tenancy.

The landlord also claims the cost of \$89.27 for power washing the deck. The tenants testified that they would have liked an opportunity to wash the deck themselves.

The landlord testified that she was not at the rental unit at the end of the tenancy; she relied on her realtor and contractor to take care of things for her.

Analysis

Landlord's Claims

The effective date of the notice to end tenancy was August 31. Although the tenants could express the hope that they would be out before that date – and that is all they did do – they had no obligation to do so. The landlord had no right to take possession of the rental unit before the expiry of the tenancy.

By taking possession of the unit and cleaning it before the end of the tenancy the landlord prevented the tenants from cleaning the unit themselves. Accordingly, the claims for cleaning and power washing the deck are dismissed.

With respect to the claim for carpet removal on any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The only evidence before me is the tenants' oral testimony that the carpet was in poor condition at the start of the tenancy and it had been badly soiled during their move, and the landlord's hearsay evidence from her helpers that the carpet could not be cleaned. There are no photographs or witness statements in support of the landlord's claim.

There is also no move-in condition inspection report. The great advantage of a property completed move-in or move-out condition inspection report is that section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The onus of proof is on the applicant. When there is only the conflicting oral testimony of the parties there is not enough evidence to tip the balance of probabilities in the landlord's favour. Accordingly, this claim is dismissed.

The same analysis applies to the landlord's claim for debris removal. The tenants say the stuff was there when they moved in; the landlord says that as far as she knows it was not. The landlord did not even testify that she had seen the unit at the start of this tenancy or at the end of the previous tenancy and nothing was left behind. The landlord has not met the burden of proof on this claim and it is dismissed.

In conclusion, all of the landlord's claim for cleaning and repairs are dismissed.

Tenants' Claims

Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must conduct a move-in inspection together and complete a move-in condition inspection report in accordance with the regulation. Section 24 sets out the consequences for both parties if the inspection is not conducted, the report not completed, or a copy of the report not given to the tenant. For landlords the consequence is that their right to claim against the security deposit or pet damage deposit is extinguished.

Section 35 provides that at the end of every tenancy the landlord and the tenant must conduct a move-out inspection together and the landlord must complete a move-out condition inspection report and provide a copy to the tenant. Section 36 prescribes the same penalties as section 24 for non-compliance.

Section 38(1) provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or, if the landlord has the legal right to do so, file an application for dispute resolution claiming against the deposit. If the landlord's right to claim against the security deposit has been extinguished by either section 24 or 36 the landlord's only option upon receipt of the tenant's forwarding address in writing is to return the security deposit within 15 days.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

The tenants testified that their forwarding address was on the move-out condition inspection report; the landlord testified it was not. Neither party filed a copy of the document in evidence.

The onus is on the tenants to prove, on a balance of probabilities that they gave the landlord their forwarding address in writing. As explained previously, when the only evidence is the conflicting oral testimony of the parties that is not enough to tip the balance of probabilities in the applicant's favour. Accordingly, I find that the tenants have not met the burden of proof on that particular their application for payment of the

section 38(6) penalty is dismissed; they are however entitled to return of the security deposit in full.

Conclusion

The landlord's claims are dismissed for the reasons set out above.

The tenants have established a total monetary claim of \$725.00 comprised of the security deposit of \$675.00 and the \$50.00 fee they paid to file this application and I grant the tenants an order under section 67 in this amount. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 23, 2014

Residential Tenancy Branch

