



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 the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her witness; both tenants and their witness.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for losses or damages; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on August 6, 2012 for 1 year fixed term tenancy beginning on September 1, 2012 that converted to a month to month tenancy on September 1, 2013 for a monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$475.00 paid. The parties agree the tenancy ended on October 31, 2013.

The landlord submits that at the end of the tenancy the tenants failed to leave the rental unit sufficiently clean and that it required 4 hours of additional cleaning at \$20.00 per hour. The landlord submits that in particular window sills; doors; floors; the toilet; sinks; drawers and cabinets required cleaning. The landlord also states the bedrooms shelves in cupboards required cleaning as well as marks on the walls required wiping. The landlord completed additional cleaning on the deck and all of the light fixtures.

The landlord has provided into evidence a copy of an email sent from the landlord's witness to the tenants documenting the cleaning that she had completed and intended to complete. The landlord has also provided photographic evidence of the condition of the some parts of the rental unit.

The photographs submitted included pictures of some window sills; the bottom panel of a door; marks on the wall of the master and second bedroom; damage to the inside of a linen particleboard cupboard; the vinyl deck and siding on the deck wall.

The tenants agree that the unit could have been cleaned some more and that it would have likely taken about an hour to complete the cleaning required. The tenants also submit that during the month of October 2013 the landlord had numerous people in the rental unit to replace the flooring and they believe the landlord asking the tenants to clean up, at least in part, after the workers.

The landlord also seeks compensation for the tenants' failure to replace light bulbs throughout the rental unit. The landlord submits that the replacement of light bulbs cost \$35.82. The landlord also submits the tenants removed some curtain panels that the landlord had to replace at a cost of \$67.18 for total cost of replacements of \$103.00.

The parties acknowledge that on November 1, 2013, by way of email negotiation, the landlord agree to allow the tenants to return the curtain panels and replace the light bulbs. However the landlord testified that she never heard from the tenants until November 7, 2013 as to when to arrange the drop off and because she had not heard from them she had already gone to purchase replacements.

Analysis

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants, in accordance with the regulation.

Section 36 states that, unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit or both, for damage to the residential property is extinguished if the landlord does not provide 2 opportunities for an inspection; does not participate in the inspection; or having made an inspection does not complete a condition inspection report in accordance with the regulation.

Section 20 of the Residential Tenancy Regulation states that a condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a) The correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b) The address of the rental unit being inspected;
- (c) The date on which the tenant is entitled to possession of the rental unit;
- (d) The address for service of the landlord;
- (e) The date of the condition inspection;
- (f) A statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

- (i) Entry;
- (ii) Living rooms;
- (iii) Kitchen;
- (iv) Dining room or eating area;
- (v) Stairs;
- (vi) Halls;
- (vii) Bathrooms;
- (viii) Bedrooms;
- (ix) Storage;
- (x) Basement or crawl space;
- (xi) Other rooms;
- (xii) Exterior, including balcony, patio and yard;
- (xiii) Garage or parking area;

(g) A statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) Any other items which the landlord and tenant agree should be included;

(i) A statement identifying any damage or items in need of maintenance or repair;

(j) Appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) The following statement, to be completed by the tenant:

I, [Tenant's name]

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....
.....

(l) A space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the *Act* [*condition inspection: end of tenancy*] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) A statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) If agreed upon by the landlord and tenant,

(i) The amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) The tenant's signature indicating agreement with the deduction, and

(iii) The date on which the tenant signed.

Based on the tenant testimony and the documentary evidence provided by the landlord I find that the document the landlord is relying upon as a Condition Inspection Report does not comply with Section 20 of the Regulation and as such, I find the landlord has extinguished her right to claim against the security deposit. However, I note that this does not preclude the landlord from making a claim against the tenants for any damage; losses; or cleaning costs incurred.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

From the evidence and testimony of both parties, I accept that both parties agree that some additional cleaning was required at the end of the tenancy. Based on the photographic evidence I accept that some of the cleaning required included: window sills; walls and the linen cabinet.

However, I note that the landlord did not provide any photographs of areas such as the kitchen or bathroom where it seems that the majority of cleaning was required. I also note that photograph of the deck that the landlord relies upon to show the deck needed cleaning shows one leaf on the deck and as such I find no need for additional cleaning of the deck.

I find the landlord has failed to provide photographic evidence; the tenants dispute the amount of cleaning; and the landlord does not have a signed move out Condition Inspection Report showing agreement by the tenants for additional cleaning in the areas of the kitchen and bathroom.

As a result, I also find the landlord has failed to provide sufficient evidence to establish the full amount of cleaning claimed that would be required to bring the unit to a reasonably clean standard as is required under Section 37. Based on the above, I grant the landlord 2 hours of cleaning. I find the charge of \$20.00 per hour to be a reasonable rate for cleaning.

While I accept that the landlord had agreed to allow the tenants to return light bulbs and the curtain panels that they had mistakenly taken, I find that it was incumbent on the tenants to either return them immediately or to make arrangements immediately to have the items returned to the landlord.

I find that there was no evidence before me that the tenants had attempted to make these arrangements until a week after the agreement was made. As such, I find that it was reasonable for the landlord to obtain replacements for both items. I find the landlord has established the value of these items at \$103.72 through the provision of her receipts.

All of the evidence presented to me in regard to the mailbox key consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As to the landlord's claim for the costs of changing the mailbox key, I am satisfied by the tenants' submission that they checked their mail and then returned the key on October 31, 2013. I find it would be reasonable to expect a landlord to check to see if all keys returned by the tenants actually worked at the time the keys were returned.

As the landlord took no steps to confirm the key was correct when it was returned and because the landlord then had exclusive control of that key I find the landlord has failed to provide sufficient evidence to establish the tenants returned the wrong key. As such, I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$193.72** comprised of \$40.00 cleaning; \$103.72 replacement bulbs and curtain panels and the \$50.00 fee paid by the landlord for this application.

Section 72 of the *Act* states if I order a tenant in a dispute resolution proceeding to pay any amount to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

I order the landlord may deduct the amount above from the security deposit held in the amount of \$475.00 in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **\$281.28** for return of the balance of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: February 25, 2014

