



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied for recovery of the security and pet deposits. The landlord applied for a monetary order and an order to retain the deposits in partial compensation of his claim. The two tenants, the landlord and a witness for the landlord participated in the teleconference hearing.

The hearing first convened on November 25, 2013. On that date, issues arose regarding service of the applications and the evidence, and I determined that it was appropriate to adjourn the hearing to allow the parties the opportunity to serve or re-serve their evidence.

The hearing reconvened on January 24, 2014. The tenants and the landlord indicated that they were prepared to proceed with the hearing on that date. All participants were given the opportunity to give testimony, ask questions and make submissions. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I note that at approximately 26 minutes into the teleconference hearing, the landlord unexpectedly disconnected from the hearing. I asked the tenants to wait, and no discussion took place while the landlord was absent. The landlord called back into the hearing approximately three minutes later, and the hearing resumed.

Issue(s) to be Decided

Are the tenants entitled to recovery of the security and pet deposits?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on January 29, 2012. On that date, the landlord and the tenants carried out a move-in inspection and signed a condition inspection report. At the outset of the tenancy the tenants paid the landlord a security deposit of \$825 and a pet deposit of \$200. The tenancy ended on July 31, 2013. On August 2, 2013 the tenants and an agent for the landlord met at the rental unit to do a move-out inspection; however, the move-out condition inspection report was not completed in full accordance with the Act.

Tenants' Evidence

The tenants stated that when they met with the landlord's agent on August 2, 2013 to do the move-out inspection, the agent did not have the landlord's copy of the move-in condition inspection report. The agent took a picture of the move-in condition inspection report, but nothing was noted during the inspection, and there was nothing for the tenants to sign. The tenants stated that they gave the agent their forwarding address in writing at that time. The tenants submitted copies of text messages between themselves and the landlord. The landlord indicated in one of his texts that he received the tenants' forwarding address on August 4, 2013. The tenants texted a reply that they gave their forwarding address to the agent on August 2, 2013. The tenants stated that they did not receive a copy of the move-out report until January 2014, as they did not receive the landlord's evidence with his application in August 2013.

In regard to the landlord's application, the tenants submitted that any damage to the rental unit was normal wear and tear. As is noted in the move-in condition inspection report, the house was in poor condition at the beginning of the tenancy. In support of their position the tenants submitted photographs of various damaged portions of the rental unit. The tenants stated that they took these photographs at the move-in inspection on October 29, 2012. The tenants stated that their daughter and her husband, who previously lived in the lower unit, had entered in to a tenancy agreement with the landlord to rent the upstairs unit beginning in August 2013. The tenants' daughter had been gradually moving upstairs for approximately two weeks before the end of July 2013, and the tenants moved out on July 31, 2013; therefore, it was not possible to do a proper move-out inspection on August 2, 2013. The tenants also pointed out that the landlord did not provide an itemized list of his monetary claim.

Landlord's Evidence

The landlord stated that the house was left in a very poor condition at the end of the tenancy. The landlord's agent, AH, took photographs of the rental unit. AH appeared as a witness in the hearing and stated that the rental unit was dirty and not in the proper condition for the new tenant to move in. AH acknowledged that she did not have a report when she conducted the inspection.

The landlord stated that at the end of the tenancy the rental unit was disgusting, and looked like it had never been cleaned. The landlord stated that he did a lot of the cleaning and repairs himself, which explains the lack of receipts. The landlord acknowledged that there was wear and tear on the carpets, but somebody also poured oil on the carpets and there was no indication that the carpets were cleaned.

In regard to the tenants' application, the landlord stated that he sent the condition inspection report to the tenants with his application in August 2013, and the tenants only gave their forwarding address by text message.

Analysis

Upon consideration of all relevant evidence and testimony, I find as follows.

The landlord's monetary claim cannot succeed. The landlord's evidence of the condition of the rental unit on August 2, 2013 does not clearly establish that the tenants, as opposed to the new tenant, their daughter, caused damage or left any garbage behind. The agent's notes on the condition inspection report were clearly entered after the inspection, as the agent did not have a copy of the inspection report at the time of the move-out inspection. Based on the move-in condition inspection report and the tenants' photographs, the rental unit was in poor condition at the beginning of the tenancy. Finally, the landlord did not provide the age of repaired or replaced items, so depreciation could not be taken into account.

The tenants are entitled to recovery of the security deposit and pet deposit. I find that the tenants did not provide sufficient evidence that the landlord failed to make his application on time, as the only clear evidence was that the landlord acknowledged receiving the tenants' forwarding address on August 4, 2013, and he made his application on August 16, 2013.

As the landlord was not successful in his application, he is not entitled to recovery of the filing fee for the cost of his application. The tenants' application was successful, and I therefore grant the tenants recovery of the \$50 filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed.

I grant the tenants an order under section 67 for the balance due of \$1075. 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: February 21, 2014

Residential Tenancy Branch

