



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This is an application for a Monetary Order for \$800.00.

A small amount of documentary evidence and written arguments has been submitted to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established a monetary claim in the amount of \$800.00?

Background and Evidence

All parties agreed that:

- This tenancy began on November 1, 2012 and ended on August 1, 2013.
- The tenants paid a security deposit of \$625.00 on or before the beginning of the tenancy. The landlord is still holding that security deposit.
- No move-in inspection report was done at the beginning of the tenancy, nor was a move-out inspection report done at the end of the tenancy.
- The landlord was given a forwarding address in writing on August 1, 2013.

The applicant testified that:

- When the tenants moved out of the rental unit they left the unit damaged and dirty.

- There was one broken interior door, and one broken exterior door and they both had to be replaced.
- The rental unit was left very dirty, one of the blinds was broken, and there was paint splashed on the walls that had to be painted over.
- They had to purchase the doors, blind and painting materials; however they did all the labour themselves.

The applicants are therefore requesting a Monetary Order as follows:

Cost to purchase two doors	\$635.04
Further materials and labour	\$164.96
Filing fee	\$50.00
Total	\$850.00

The tenants testified that:

- The interior door was already broken when they moved into the rental unit.
- They admit that they did break the door handle and lock on an exterior door, however there was no damage to the door itself and therefore the door did not need to be replaced.
- They had to break the door handle to gain access to their belongings as the landlord was not allowing them access.
- They did no further damage to the rental unit, and they left the unit in as good condition as they had received it when they moved in.
- They therefore believe that other than a small amount for replacing the door handle and lock, the remainder of this claim should be dismissed.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case, the landlord has provided no evidence to show the condition of the rental unit at either the beginning of the tenancy or at the end of the tenancy, and therefore it is basically just the landlord's word against that of the tenants. That is not sufficient to meet the burden of proving the landlords claims.

The only evidence provided by the landlord in support of her testimony is a copy of an invoice for some doors and invoices for paint etc. however it's my finding that this is insufficient to prove that the tenants caused damage to this rental unit.

The tenants do admit that they damaged a lock and door handle, and therefore I am willing to allow a portion of the landlords claim to cover the cost of replacing those items. I will allow \$50.00 for replacement of the door lock in handle.

I will not allow the remainder of the landlords claim, nor recovery of the filing fee

Further, Section 23 of the Residential Tenancy Act requires the landlord to do a move-in inspection at the beginning of the tenancy and provide the tenants with a copy of that move-in inspection report. In this case that report was never done.

Section 24 of the Residential Tenancy Act goes on to state that if the landlord fails to comply with the requirements of Section 23, the landlord's right claim against the security deposit for damages is extinguished.

Therefore in this case the landlord did not have the right claim against the security deposit for damages and should have returned the deposit as required.

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on August 1, 2013, and the landlord has admitted that they had a forwarding address in writing by August 1, 2013 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenants have not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$625.00, and therefore the landlords must pay \$1250.00 to the tenants.

Conclusion

I have only allowed \$50.00 of the landlords claim, however as stated above the landlords are required to pay \$1250.00 to the tenants. I have therefore set off the \$50.00 against the \$1250.00, and have issued an order for the landlords to pay \$1200.00 to the tenants.

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 27, 2014

Residential Tenancy Branch

