



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with monetary claims by the landlord and the tenants. The landlord, an agent for the landlord and one tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. 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.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on June 15, 2013 with monthly rent of \$1600 due on the 15th day of each month. At the outset of the tenancy the tenants paid the landlord a security deposit of \$800. On June 15, 2013 the tenants and the landlord carried out a joint move-in inspection and completed a condition inspection report.

The tenancy ended on October 15, 2013. On November 2, 2013 the parties carried out a move-out inspection and completed a condition inspection report. The tenants signed the report but did not give the landlord written authorization to retain any portion of the security deposit. The tenants also provided their forwarding address in writing on that date. The landlord returned \$310.98 of the security deposit on January 3, 2014, and made an application to keep the balance of the deposit on March 24, 2014.

Tenants' Claim

The tenants applied for double recovery of the security deposit, on the basis that the landlord did not return the security deposit or make an application to keep it within the required time frame. The tenants did not give the landlord written authorization to keep the deposit.

The landlord's response to the tenants' application was that there was a clear chain of emails between the landlord and the tenants regarding water damage in the unit, and the tenants indicated in the emails that they were prepared to take responsibility for the water damage.

Landlord's Claim

In her application the landlord claimed monetary compensation of \$1677.33. In the hearing the landlord stated that she was no longer claiming for property that the tenants removed from the unit but have since returned. Therefore, landlord's claim was reduced to \$1509.35.

The landlord submitted that the tenants caused damage to a mirror door and water damage in the unit, and the damage may not have occurred to such an extent if the tenants had not delayed in notifying the landlord about the damage.

a) mirror door

In regard to the mirror door, the landlord stated that the apartment was fairly old, built in approximately the mid-80's, but the door had never been damaged before. The tenants first notified the landlord of the damaged mirror on October 29, 2013, after the tenancy had ended. The landlord's evidence indicated that the crack was approximately 22.75 inches in length. The landlord did not believe that the crack was caused by normal wear and tear. The landlord got three quotes for repairing the mirror, the lowest of which was \$446 plus taxes. This is the amount that the landlord has claimed for replacement of the mirror door.

The tenant's response regarding the mirror door was that the mirror was very old, and a small crack occurred that got bigger and bigger. The tenant stated that the crack occurred from moving the door normally, and it was from normal wear and tear.

b) water damage

In regard to the water damage, the landlord stated that on October 17, 2013 she was contacted by her neighbour who lives in the unit below the rental unit. The neighbour informed the landlord that there was damage in his unit caused by a water leak from the rental unit. In a written statement, the neighbour indicated that he was away on holidays from October 9 to 17, 2013, and when he returned home on October 17, 2013 he notices a two-metre water stain on his washroom ceiling; he also noted that the water and moisture dampness were still present at the time. In his written statement the neighbour also indicated that on October 25, 2013 he had a tradesperson look in his unit; the tradesperson's assessment was that the water damage came from the unit above (the rental unit).

In support of this portion of her application, the landlord also submitted a written statement from another resident in the building, who indicated that the building was completely replumbed in 2007, and she was not aware of any leaks due to pipe failure since that time. The landlord provided photographs of the water stains in the neighbour's unit. The landlord stated that she obtained estimates to repair the damage, and based on those estimates she has claimed \$1009.83, including tax, for the water damage.

The tenants' response regarding the water damage was that they moved out and returned their keys to the landlord on October 13, 2013. The landlord's email indicates that she had a house-sitter in the unit after the tenants vacated. The tenants stated that the water damage was not caused by their neglect; rather, it was likely part of an ongoing issue of leaks and water damage in the building.

Analysis

Tenant's Claim

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on October 15, 2013, and the tenants provided their forwarding address in writing on November 2, 2013. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving

the tenants' forwarding address in writing. I therefore find that the tenants have established a claim for double recovery of the security deposit, in the amount of \$1600, less \$310.98 that the landlord already paid to the tenant, for a balance of \$1289.02.

Landlord's Claim

I find that the landlord's claim cannot succeed. The landlord did not provide sufficient evidence to establish that the crack in the mirror was caused by anything other than normal use, and the landlord failed to take into account depreciation. In regard to the water damage, the landlord failed to establish that the damage did originate from her unit or that it occurred prior to October 13, 2013, the date that the tenants vacated from the rental unit.

Filing Fees

As the tenants' application was successful, they are entitled to recovery of their \$50 filing fee.

The landlord's application was not successful, and she is therefore not entitled to recovery of her filing fee.

Conclusion

The landlord's application is dismissed.

I grant the tenants an order under section 67 for the balance due of \$1339.02. 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: April 28, 2014

Residential Tenancy Branch

