



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for double recovery of the security deposit. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim.

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

Is the tenant entitled to double recovery of the security deposit?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on March 1, 2013, with monthly rent of \$1600. At the outset of the tenancy the tenant paid the landlord a security deposit of \$800. The landlord and the tenant did not carry out a move-in inspection at the outset of the tenancy. The tenancy ended at the end of September 2013. The tenant found someone to take over her lease beginning October 15, 2013. On September 29, 2013 the tenant's spouse paid the landlord \$600 which the landlord put toward rent for the first half of October 2013. The tenant provided the landlord with her written forwarding address by registered mail, which the landlord received on October 15, 2013. The landlord did not return the security deposit, and she filed her application to keep the deposit on February 5, 2014.

Tenant's Claim

The tenant has claimed double recovery of the security deposit on the basis that the landlord failed to either return the deposit or make an application to keep the deposit within 15 days of having received the tenant's forwarding address in writing.

The landlord's response to the tenant's claim was that the landlord and the tenant verbally agreed that the landlord would keep the security deposit as payment for rent for the first half of October 2013. The landlord characterized the tenant's payment of \$600 on September 29, 2013 as "a security deposit for damage." The landlord had locked the tenants' movers out of the rental unit before they had completed removing the tenants' belongings, and the landlord acknowledged that she was holding the tenant's remaining furniture and possessions hostage because the tenant refused to do a move-out inspection or give the landlord a forwarding address in writing. After the tenant's spouse paid the landlord \$600, the landlord allowed the movers to have access to the unit. The landlord confirmed that she did not ask the tenant to do a move-out inspection after that.

Landlord's Claim

The landlord did not submit a monetary order worksheet with her application as required, but she submitted a written narrative that included the monetary amounts she claimed, for a total claim of \$2467.45, as follows:

- \$800 for rent from October 1 to 15, 2013;
- \$236.25 for cleaning – the landlord stated that the unit was not fully cleaned when the tenant moved out. The landlord submitted an invoice for five hours of cleaning at \$45 per hour, plus applicable tax;
- \$150 for three hours of labour by the landlord's partner to repair the fireplace, which the landlord stated was pulled from the wall and the marble panels were loose;
- \$50 for one hour of labour by the landlord's partner to repair and re-hang a smoke detector, which the landlord stated was pulled off the ceiling;
- estimated \$431.20 to replace a living room blind to match existing blinds. The landlord submitted an estimate for the blind;
- \$100 to patch, sand and repaint the master bedroom door, which the landlord stated was scratched at the base;
- \$100 to remove hardware and nails and patch and paint where nail holes and hardware were left over the door; and

- \$500 to repair scratches to wood floor – the landlord stated that the tenant scratched the floor when she dragged boxes and furniture over it while moving out.

The tenant disputed the landlord's claim, aside from acknowledging that the landlord was entitled to rent of \$800 for October 1 to 15, 2013. There was no move-in inspection to establish the condition of the unit at the beginning of the tenancy. The tenant left a new blind to replace the damaged blind, and the landlord installed it for the new tenants, so the landlord has not suffered a loss for the blind. The landlord did not provide any bills or photographs of the other alleged damage.

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, I find that the landlord had no written authority to retain the security deposit, and she failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of her security deposit, in the amount of \$1600.

Landlord's Claim

I find that the landlord is entitled to rent for October 1 to 15, 2013, as agreed upon by the landlord and the tenant. However, the tenant paid the landlord \$600 on September 29, 2013, and this amount must be characterized as a payment toward rent, as the landlord had no authority under the Act to either hold the tenant's furniture hostage, which could be construed as theft, or to take a further "damage deposit." Therefore, the landlord is entitled to \$200 for the balance of rent the tenant owed for October 1 to 15, 2013.

I find that the remainder of the landlord's claim must fail, as she did not provide sufficient evidence to support the other amounts claimed. The landlord did not provide photographs or other evidence to establish that there was damage in the rental unit

caused by the tenant, or further cleaning that was required. Moreover, the landlord did not do a move-in inspection with the tenant and complete a condition inspection report at the beginning of the tenancy, so there is no agreed-upon evidence of the condition of the unit at the outset of the tenancy.

Filing Fees

As the tenant's application was successful, she is entitled to recovery of her \$50 filing fee. As the landlord's application was mostly unsuccessful, she is not entitled to recovery of her filing fee.

Conclusion

The tenant is entitled to \$1650. The landlord is entitled to \$200. I grant the tenant an order under section 67 for the balance due of \$1450. 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: March 7, 2014

Residential Tenancy Branch

