



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding John Dowling Ent
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND, MNSD, FF
 Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and one of the tenants.

While the landlord provided several letters of support from other tenants that he has had and continues to have I find that they have no direct impact on the issues before me. As such, while I have read the letters I have not considered them in this decision.

The landlord had arranged for a witness to attend the hearing and had provided, prior to the hearing, a written statement from the witness. During the hearing the tenant indicated that he did not have any questions for the landlord's witness and the landlord decided that he would not call the witness to testify, he would let the written statement stand.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning of the rental unit; 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)*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted a copy of a tenancy agreement signed by the parties on August 29, 2012 for a 12 month fixed term tenancy beginning on September 1, 2012 that

converted to a month to month tenancy beginning on September 1, 2013 for a monthly rent of \$1,175.00 due on the 1st of each month with a security deposit of \$587.00 paid.

The tenancy ended on December 31, 2013. The tenants submit they provided the landlord with their forwarding address in writing on the same date. The tenants submit that they know the landlord received the address because he presented himself to the tenants at their new address on January 1, 2014.

The tenants submit that the landlord did not conduct a Condition Inspection either when the tenancy began or when the tenants moved out of the rental unit. However, the tenants submit that the landlord, on January 1, 2014, provided the tenants with a list of cleaning deficiencies and offered the tenants an opportunity to come back and clean six specific items. The tenants submit that they did clean the requested items and the landlord checked and confirmed that unit was sufficiently cleaned.

The landlord acknowledges that he did not conduct either a move in or move out Condition Inspection. He states that on January 1, 2014 as the new tenant was moving in she noticed that several things had not been cleaned and advised the landlord. He acknowledges that he contacted and requested the tenants return and complete the cleaning request. The landlord confirmed the tenant did complete the requested cleaning. The tenant submits that he believes that although they had cleaned the rental unit it was not up to the new tenant's standards.

The landlord submits that he later found other portions of the rental unit that had not been cleaned adequately. The landlord states that as a result of the condition the unit was left in, he provided the new tenant with compensation in the amount of \$300.00. The landlord submits he withheld \$200.00 from the tenant's security deposit as part of that compensation.

The parties agree the landlord did return \$387.00 to the tenants by cheque that they received on January 14, 2014. The tenant submits that he has not cashed the cheque to date.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit in full or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the undisputed testimony from the tenant, I find the tenancy ended on December 31, 2013 and that the tenants provided the landlord with their forwarding address on that same date. As such, I find the landlord had until January 15, 2014 to either return the deposit in full to the tenants or file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlord returned only a portion of the deposit and did not file his Application for Dispute Resolution seeking to claim against the deposit until May 16, 2014 I find the landlord failed to comply with his obligations under Section 38(1). Therefore, I find the tenants are entitled to double the amount of the security deposit less the amount already received.

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.

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

Based on the testimony of both parties I accept that the landlord determined that the rental unit required some additional cleaning and that the tenants returned to the unit and cleaned what the landlord had requested to the satisfaction of the landlord.

As such, I find the tenants had complied with the requirements under Section 37 and that the landlord had agreed the tenants had done so. Therefore I find the landlord is not entitled to any compensation for the cleaning the tenants completed.

As to the landlord's claim for other cleaning that was not completed, I find that the landlord had an obligation under Section 35 to conduct an inspection prior to a new tenant's occupancy. As the landlord failed to do so he relinquished his ability to claim that the rental unit was not sufficiently cleaned by the tenants.

Despite the new tenant's complaints regarding the condition of the rental unit, I find that a decision to compensate the new tenant because the landlord did not provide her with the rental unit that was cleaned to the new tenant's requirements is independent of whether or not the tenants failed to comply with Section 37.

For these reasons, I dismiss the landlord's Application for Dispute Resolution in its entirety.

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,224.00** comprised of \$1,174.00 double the deposit and the \$50.00 fee paid by the tenants for this application.

I note that if the tenants successfully cash the cheque provided to them in the amount of \$387.00 that they received on January 14, 2014 that the amount will be partial satisfaction of the above noted order.

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: June 11, 2014

Residential Tenancy Branch

