



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for alleged damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and neither party raised any issue regarding service of the evidence or the application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the applicant entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

The evidence shows that this tenancy began on May 15, 2006, that it ended on May 2, 2012, the ending monthly rent was \$770, and the tenants paid a security deposit of \$372.50 at the beginning of the tenancy.

The landlord's monetary claim was \$3285.84, which listed and included numerous items for repair, replacement fixtures, such as for doors, cabinet repair, bowls and rings for the oven, and building material.

The evidence shows that there was no move-in condition inspection report and no move-out condition inspection report as prepared in accordance with the Act and as required by the Residential Tenancy Branch Regulations.

The landlord's relevant documentary evidence included, but was not limited to, a written tenancy agreement, a self-prepared form of a move-out condition inspection report, receipts from home improvement and building supply stores, communication with the tenants, receipts for repairs during the tenancy and photographs of the rental unit taken at the end of the tenancy.

The tenants' relevant documentary evidence included, but was not limited to a written response to the landlord's application, water bills, a carpet cleaning receipt for the beginning of the tenancy and during the tenancy, receipts for work the tenants performed during the tenancy, and the self-prepared move-out condition inspection report.

Landlord's evidence in support of his application-

The landlord, who was not present at the move-out inspection and had an agent in attendance, submitted that there was considerable damage done by the tenants during this tenancy. Some of the damage included damage to the doors, broken blinds and windows, broken glass, and damage to the walls and cabinets.

The landlord submitted further that the tenants changed the locks, installed a ceiling fan without a certified electrician and filled the swimming pool, which cost extra for water bills.

The landlord submitted further that the 4 bowls and rings on the oven were burned through and not reparable. Additionally, the landlord was required to reinstall the cabinet door handles and sand the cupboards.

Tenants' responsive evidence-

The tenants submitted that the doors all had some degree of damage at the beginning of the tenancy and that they were not aligned. The tenants submitted further that the window was loose and just fell out of the frame.

As to the bi-fold door, it was not working, so they removed the door and left it in the rental unit. As to the oven bowls, these were a result of reasonable wear and tear over the long term tenancy.

As to the cupboards, the tenant submitted they did not understand why they would need sanding and the only issue was the handles, which were removed and left in the rental unit. The tenant submitted further that they had trouble using the handles, the cupboards were not damaged, and they just neglected to reinstall them.

The tenants submitted further that any damage was reasonable wear and tear and that the rental unit was left at least reasonably clean.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

In a case such as this where a landlord is claiming that the tenants damaged the rental unit beyond reasonable wear and tear, a key component in establishing a claim for such damage is the record of the rental unit at the start and end of the tenancy as would be contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, it is undisputed that the landlord has failed to meet his obligation under of the Act of conducting a move-in inspection with these tenants and preparing and providing reports which comply with the requirements of sections 18-20 of the Residential Tenancy Regulations. These reports are designed and for the purpose of providing a record of and tend to prove the condition of the rental unit prior to the tenancy and after the tenancy ended. It is important that a tenant is provided an opportunity to note their version of the condition of the rental unit, and in this case, there was no such opportunity at the beginning.

I also could not rely upon the landlord's photographs as he did not have a like photograph of the same item at the beginning of the tenancy, and I was therefore unable to determine if damage for which the tenants may be responsible had occurred.

Due to the lack of a move-in condition inspection report or other independent record of the state of the rental unit at the beginning of the tenancy and a compliant condition inspection report taken at the end of the tenancy, or other evidence of the state of the rental unit, and due to the disputed verbal evidence of the parties, I find the landlord

submitted insufficient evidence to support his claim for damage to and cleaning for the rental unit. I therefore dismiss the landlord's application, including his request to recover the filing fee paid for this application, without leave to reapply.

As to the tenants' security deposit, which the landlord has retained, I do not order that he return the security deposit although I have dismissed his application claiming against the security deposit, as the tenants confirmed not providing the landlord with a written forwarding address. Therefore, according to section 39 of the Act, the landlord may keep the tenants' security deposit.

Conclusion

The landlord's application is dismissed.

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: August 14, 2014

Residential Tenancy Branch

