



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit and alleged unpaid rent or utilities, and for recovery of the filing fee paid for this application.

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

Thereafter both 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.

Preliminary matter-The parties were recently in dispute resolution on the landlord's other application for monetary compensation for alleged damage to the rental unit, which resulted in the landlord being granted a monetary award of \$200, and authority to retain the tenant's security deposit of \$200 in satisfaction of this award. For that application, file 817148, the landlord submitted documentary evidence. For this current application, there was no documentary evidence on file for the landlord; however, the landlord submitted that she did file evidence.

Upon a review, this evidence was contained in the landlord's other file, 817148. The evidence included a monetary order worksheet, photographs of the rental unit, and a tenancy agreement. It must be noted that the landlord failed to reference a file number on her evidence and had attempted to join her two applications for one hearing, which occurred on April 17, 2014. The tenant agreed that she had received this evidence, although it was not clear if the evidence was sent for the landlord's first application or this present application.

During the hearing, the landlord testified regarding her evidence and as I was able to view the evidence from the other file, the hearing continued. The landlord was advised that prior to making a Decision on the present application, I would request her original evidence from file 817148 so that I could review her evidence, which apparently contained coloured photographs of the rental unit, according to the landlord.

After the hearing, I did ask for and receive the evidence from file 817148; however, I was informed that the photographs were the same black and white copies of photos and not the original coloured photographs.

I must further note that despite the fact of not having been able to view coloured photographs, this did not ultimately impact my Decision, as will be later explained.

Issue(s) to be Decided

Is the landlord entitled to authority to retain the tenant's security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 1, 2013, and ended in March 2014.

The landlord's monetary claim is \$326, comprised of a damaged leather seat in the amount of \$82.50 and replacement of cupboard doors, hardware, supplies, and cleaning for \$243.50.

Landlord's testimony in support of her application-

The landlord submitted that the rental unit was partially furnished and that the tenant damaged the leather chair which had been part of the furnishings. The leather costs were for 1.5 meters of leather for \$55 per meter.

The landlord submitted further that the rental unit was not cleaned at all, the tenant left excessive nail and screw holes and that the cupboard doors were required to be reinstalled.

In response to my question, the landlord confirmed that there was no move-in or move-out condition inspection report, and that she had not provided the tenant a final opportunity to inspect the premises. The landlord submitted that the photographs were proof of the good condition of the rental unit at the start of the tenancy.

In further response to a question, the landlord could not supply a date on which the photographs were taken.

Tenant's response to the landlord's evidence-

The tenant denied damaging the chair and did not know what chair the landlord was referencing. The tenant pointed out there were no photos of the chair prior to the tenancy beginning.

The tenant submitted further she did clean the rental unit on March 30, but that the photographs taken by the landlord after the tenancy ended was on March 29, 2014, and that they were fraudulent.

The tenant denied cat urine was left, and that there had been a leak in the rental unit, which she had asked the landlord to repair, with no results.

As to the nail holes, the tenant submitted that there were nail holes when she moved in and that the screws were for repairs. The tenant submitted further that the walls were not all the same colour when she moved in and that she had requested to remove the cabinet doors when she was living in the rental unit. The hardware was still in the rental unit, according to the tenant.

Landlord's rebuttal-

The landlord denied that the photographs were fraudulent or that the tenant had completed any repairs and cleaning as she left the keys. The landlord denied any discussion of a water leak.

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 tenant 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 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 her obligation under of the Act of completing the inspections and providing reports, which would show 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.

I also could not rely upon the landlord's photographs as she was unable to supply the date upon which they were taken.

Due to the lack of a compliant condition inspection report taken at the beginning of the tenancy, or other evidence of the state of the rental unit, including dated and provable photographs and the disputed verbal evidence of the parties, I find the landlord submitted insufficient evidence to support her claim for damage to and cleaning for the rental unit and I therefore dismiss the landlord's application, including her request to recover the filing fee paid for this application, without leave to reapply.

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 6, 2014

Residential Tenancy Branch

