



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Landlords to retain the Tenant's security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 15, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy was to start on May 31, 2014 as a 1 year fixed term tenancy with an expiry date of May 31, 2015. The Tenancy Agreement was signed on April 3, 2014. Rent was \$1,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 on May 9, 2014. The parties signed a Mutual Agreement to End the Tenancy dated May 27, 2014 and the tenancy ended on May 27, 2014.

The Landlord said the Tenant requested in writing to paint a bedroom a deep red colour on April 5, 2014. The bedroom was painted red. The Landlord submitted the letter which also says that the Tenant will "paint it back upon move out". The Tenant said that she does not have a copy of this letter and she does not fully recall it. Upon questioning and discussing the letter and the Tenant's signature on the letter the Tenant agreed that she wrote the letter. The Tenant continued to say that she did not actually do the painting. The Landlord continued to say that the room was not returned to the original colour when the tenancy ended and she has now made an application to retain the Tenant's security deposit of \$500.00 to cover the costs of repainting the bedroom. The Landlord said the room has not been painted, but she has included three quotes to

paint the room in her evidence package. The Landlord said the average of the quotes is \$514.00.

The Tenant said the room was painted on the request of another occupant who was the Landlord's son's girlfriend. The Tenant said she should not be held responsible for the painting of the room because she did not do the painting and the room was not her bedroom. In addition the Tenant said the Landlord lived in the basement unit of this house therefore the Residential Tenancy Branch does not have jurisdiction. The Landlord said the basement unit is a separate suite with kitchen and bathroom facilities. The Tenant continued to say that the Landlord did not complete a move in or move out inspection therefore the Landlord does not have a claim on her security deposit.

The Tenant said in closing that she did not paint the room so she should not be responsible to paint it back to the original colour. As well the Tenant said that she did not move in because the Landlord's son and her son had a legal dispute that stopped her from moving into the unit.

The Landlord said in closing that she just wants the room to be painted back to the original colour as indicated in the Tenant's letter dated April 5, 2014.

Analysis

Section 4 (c) of the Act says the Act does not apply to living situations where a landlord/owner and a tenant share a kitchen and bathroom. I accept the Landlord's testimony that the basement unit in this house is a separate suite with cooking facilities and a separate bathroom so that the Landlord does not share the upper kitchen and bathroom with the Tenant. I have reviewed the Tenant's request about jurisdiction and I find the Residential Tenancy Act does have jurisdiction in this situation.

It appears from the testimony that this tenancy was complicated by a number of outside factors that ended the tenancy in a Mutual Agreement to End Tenancy dated May 27, 2014. Section 16 of the Act states that the rights and obligations of landlords and tenants take effect as soon as an agreement is entered into whether or not the tenants ever occupy the rental unit. Consequently, I find there is a tenancy and the Landlords' and Tenant's rights and obligations started on April 3, 2014. The date the tenancy agreement was signed. Further, I accept the Tenant's written note of April 5, 2014 requesting to paint a room and the commitment to paint the room back when the Tenant move out. It is clear from the evidence and testimony the Landlord approved

the room painting based on the understanding that the room would be painted back to the original colour on move out. The room was not painted back to the original colour when the Tenant moved out. Consequently I find based on the Tenant's written obligation to paint the room in her note of April 5, 2014, that the Landlord has established grounds to retain the Tenant's security deposit as full settlement of the Landlord's application. As the Landlord has only submitted quotes for the repainting I order the Landlord to retain the Tenant's \$500.00 security deposit as full settlement of the Landlord's claim. This is because the work has not been done and the costs may be less than the quotes therefore I dismiss the Landlord's claim for the filing fee of \$50.00 and the registered mail costs of \$12.00.

Conclusion

I order the Landlord to retain the Tenant's security deposit of \$500.00 as full settlement of the Landlord's application.

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: October 15, 2014

Residential Tenancy Branch

