



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The tenant confirmed receipt of the landlord's evidence although this was not received by the Arbitrator prior to the hearing.

Issue(s) to be Decided

Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agreed that this tenancy started on January 05, 2014. This was a fixed term tenancy which reverted to a month to month tenancy on April 01, 2014. Rent for this unit was \$1,400.00 per month due on the first of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy. This tenancy ended on June 15, 2014.

The landlord submitted that he seeks an Order to keep the security deposit to cover damages to the couch and the hardwood flooring in the unit and for carpet cleaning, duct cleaning and general cleaning of the unit.

The landlord testified that at the start of the tenancy the parties conducted a walk through of the unit and the tenancy agreement made reference to the fact that the unit was in a good condition at the start of the tenancy. The landlord agreed that he did not complete a move in condition inspection report at the start of the tenancy.

The tenant requested the return of the security deposit.

Analysis

With regard to the landlord's claim for an Order to keep the security deposit; I refer the parties to s. 23 and s. 24 of the *Residential Tenancy Act* (Act) which states:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find the landlord contravened s. 23 of the *Act* as the landlord did not complete a condition inspection report with the tenant at the start of the tenancy and in accordance to s. 18, 19 and 20 of the Regulations. Consequently, s. 24(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

It is therefore my decision that the tenant is entitled to recover the security deposit of \$700.00.

Conclusion

The landlord's application for an Order to keep the security deposit is dismissed without leave to reapply.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$700.00**.

The Order must be served on the landlord. If the landlord fails to pay the Order, the Order is enforceable through the Provincial Court 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: November 10, 2014

Residential Tenancy Branch

