



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNSD
Tenant: MNDC, OLC, FF

Introduction

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

The hearing was conducted via teleconference and was attended by both landlords; the tenant and her agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order to retain all or part of the security deposit for cleaning and repairing the rental unit, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation as required under the *Act* and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on November 1 2013 as a month to month tenancy for the monthly rent of \$875.00 due on the 1st of each month with a security deposit of \$400.00 paid. The tenancy ended on August 1, 2014. The landlords submit that the tenant moved into the rental unit in October 2013 but they did not charge the tenant any rent for that month. The tenant disputed moving into the rental unit in October 2013.

The landlords submit that the tenant failed to complete the move out inspection and that the rental unit was left a mess with no cleaning completed and some damage to the unit. The landlords indicated that they had photographic evidence of the condition but did not provide any into evidence.

The landlords testified that at the start of the tenancy a walk through was completed but that no Condition Inspection Report recording the condition of the rental unit at the start

of the tenancy was completed. The landlords also testified that a Condition Inspection Report was not completed at the end of the tenancy.

The landlords did submit into evidence an invoice for the work completed. The invoice indicates that a substantial amount of garbage was removed from the unit including cigarette butts, broken furniture, and boxes; that the fridge required extensive cleaning and disinfecting; a curtain rod had to be reinstalled; a new laundry room door and hardware was installed; an re-installation of the door handle on the master bedroom door.

The invoice indicates a total amount for this work to be complete as \$748.86, however, the landlords only seek to retain the \$400.00 deposit in satisfaction of their claim.

The tenant disputes the landlords' entire claim with the exception of acknowledging the fridge required cleaning.

The tenant submits that the tenancy ended because the landlords had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property and that the landlords did not provide her with the compensation that is required to be provided when such a notice is issued. The landlords confirmed that the tenancy ended as a result of a 2 Month Notice and that they have not, to date, provided the tenant with any compensation.

Analysis

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

From the landlords' testimony I find that the landlords have failed to comply with the requirements set out in Section 23 of the *Act* and Section 18 of the Regulation. I further find that as a result of this failure the landlords have extinguished their right to claim against the deposit held for any cleaning or damage. As such I dismiss the landlords'

Application to retain the deposit and order the landlords return the deposit in full to the tenant.

As the landlords have only applied to retain the security deposit and I have found they have extinguished to right to retain the deposit, I make no findings on the landlords' assertion of repairs or cleaning that was required.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As per the testimony of both parties, I find the landlords issued a notice to end the tenancy under Section 49 of the *Act* and have failed to provide the tenant with any compensation as is required under Section 51. As a result, I find the tenant is entitled to compensation in an amount equivalent to one month's rent.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,325.00** comprised of \$400.00 security deposit; \$875.00 compensation; and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant 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: March 06, 2015

Residential Tenancy Branch

