



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to retain the security deposit to cover the cost of cleaning, repairing or replacing a door, patching the wall and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on May 01, 2014 for a fixed term of six months. At the end of the term, the tenant moved out. The rent was \$900.00 payable on the first of each month. Prior to moving in the tenant paid a security in the amount of \$450.00. A move in inspection was conducted on May 01, 2014 and the landlord filed a copy of the report.

About two weeks prior to the move out date, the landlord reminded the tenant that he was required to move out on or before 1:00 pm on October 31, 2014, at which time a move out inspection would be conducted. The tenant stated that since he was working that day, he informed the landlord that he would move out on the evening of October 30, 2014. The tenant agreed that he ended up moving out late at night and a move out inspection was not conducted that day. The landlord proceeded to conduct a move out inspection on October 31, 2014 in the absence of the tenant.

The landlord filed a copy of the report which states that she offered the tenant a second opportunity on November 03, 2014. The tenant maintained that he was not offered a second opportunity.

The landlord is claiming \$250.00 to repair/replace the door. However the landlord agreed that there was a small hole in the door at the start of tenancy, as recorded on the move in inspection report and that the door is approximately 20 years old.

The landlord is claiming the balance of the security deposit for cleaning and repairing the wall. The tenant agreed that there was some cleaning left to be done and that he had made holes in the wall to hang picture frames. The landlord did not file any photographs or receipts to support her claim.

Analysis

Section 23 of the *Residential Tenancy Act* states that a landlord must offer the tenant at least two opportunities for the inspection and the landlord must make the inspection and complete and sign the report without the tenant, if the landlord offered the tenant at least two opportunities and the tenant did not participate on either occasion.

Based on the landlord's evidence and testimony of both parties, I find that the landlord did not offer the tenant two opportunities to do a move out inspection. Therefore pursuant to section 24 of the *Residential Tenancy Act*, the right of the landlord to claim against a security deposit is extinguished if she did not comply with section 23 (two opportunities for inspection). However, even though the landlord's right to claim against the security deposit is extinguished; the landlord may make a claim for damages.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of a door is 20 years. The landlord stated that the door was approximately 20 years old. Therefore I find by the end of the tenancy, the door had outlived its useful life. Even though the tenant denied having caused damage, I find that the landlord would have had to replace the door at her own expense because the door has outlived its useful life. Accordingly, the landlord's claim is dismissed.

The tenant agreed that there was some cleaning left to be done and that he had made holes in the walls to hang picture frames. The landlord did not file photographs or receipts and in the absence of such evidence, I am unable to determine the extent of the damage.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Since the tenant agreed that there was some cleaning left to be done and that he had made holes in the wall, I find it appropriate to award the landlord \$150.00 towards the cost of cleaning and patching the walls. The landlord has proven a portion of her claim and therefore I award the landlord a portion of the filing fee in the amount of \$25.00.

Overall the landlord has established a claim of \$175.00 which consists of \$150.00 for cleaning and wall repair plus \$25.00 for the filing fee.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in satisfaction of her claim. Because the landlord has established a claim of \$175.00 it is appropriate that I order the return of the balance of the tenant's security deposit. I so order and I grant the tenant a monetary order in the amount of \$275.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of \$275.00.

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: June 23, 2015

Residential Tenancy Branch

