



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Flying Dolphin Ventures
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties appeared and had an opportunity to be heard,

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced January 1, 2013. The monthly rent of \$1300.00 was due on the first day of the month. The tenant paid a security deposit of \$650.00. A move-in inspection was conducted and a move-in condition inspection report completed. The landlords live next door to the rental unit.

On February 28, 2014, the tenant gave the landlords written notice to end tenancy effective March 31, 2013. The notice included her forwarding address.

On March 31 the tenant and her helpers were moving and cleaning. The tenant testified that she did not recall whether the landlords contacted her prior to March 31 about setting a date and time for the move-out inspection. She said she assumed that the landlords told her to come and get them when ready but as to how she came to this conclusion, she was not able to say.

According to the tenant March 31 was a beautiful Easter Sunday. The landlords were having company and the tenant and her family enjoyed the yard and the weather while the carpets were drying, until 7:00 pm.

The tenant testified that she did not know on the landlords' door because she did not want to disturb their gathering. She thought they would come over when convenient but they never did that day. The tenant filed the receipt from the carpet cleaning rental showing that she picked up the carpet cleaner around 1:00 pm, which she says is the

only time she was away from the rental unit between 11:00 am and 7:00 pm. The tenant's ex-husband and teenage daughter both submitted letters saying that the landlords did not come to the rental unit on March 31.

The female landlord testified that she spoke to the tenant on March 30 and they agreed the landlord would come for the inspection on March 31. She went to the rental unit around noon on March 31 and was told they were not ready for an inspection. This conversation occurred at the door of the rental unit.

In her rebuttal evidence the tenant said she did not recall a conversation with the female landlord on Saturday March 30. She did recall a conversation with the female landlord where she told the landlord she was not ready for the move-out inspection and that she wanted to make sure the place was really nice. The tenant said she did not recall when this conversation took place; then she said she thought she talked to the female landlord on Saturday. The tenant also testified that something may have been said about Monday.

All parties testified that as there was no one moving into the unit everyone was very relaxed about when the inspection would take place.

On Monday morning the tenant and the landlords met at the rental unit. The tenant asked the landlord if she could back to the unit if her circumstances changes; the male landlord said no. They went into the rental unit. The landlord expressed his disappointment at the condition of the first rooms they looked at. The tenant felt his remarks were aggressive and insulting. She said she felt intimidated by him so she left the keys, told the landlords they could file a claim with the Residential Tenancy Branch, and left. The landlords completed the move-out inspection and move-out condition inspection report on their own.

At some point the landlords sent the tenant a letter advising her that they were claiming \$816.99 for repairs and maintenance to the rental unit. The letter was sent to the tenant's forwarding address in writing.

The tenant acknowledges responsibility for the cost of cleaning oil stains from the driveway and repairing the refrigerator handle; a total of \$85.99.

On May 11, 2015, he tenant filed this application for dispute resolution claiming the return of the balance of the security deposit.

The landlords never filed an application for dispute resolution claiming against the security deposit and by the time they were served with this application the two year

limitation period had expired. They argue that the tenant forfeited her right to return of the security when she did not participate in the two opportunities offered for the inspection.

Analysis

Section 35(2) of the *Residential Tenancy Act* provides that a landlord must offer the tenant two opportunities, as prescribed, for the inspection. Section 17 of the *Residential Tenancy Regulation* sets out the procedure to be followed by a landlord when offering the two opportunities for inspection. Subsection (1) says the landlord must the tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. Subsection (2) states that if the tenant is not available at that time, the landlord must propose a different date and time by providing the tenant with a notice in the approved form.

Section 36(1) of the *Act* states that the right of a tenant to the return of a security deposit or pet damage deposit is extinguished if the landlord has complied with section 35(2) and the tenant has not participated on either occasion.

Subsection 36(2) (2) of the *Act* states that unless the tenant has abandoned the rental unit the right of a landlord to claim against a security deposit or pet damage deposit or both is extinguished if the landlord:

- a. does not comply with section 35(2);
- b. having complied with section 35(2), does not participate in either inspection; or,
- c. having made an inspection with the tenant, does not complete the condition inspection report and give it to the tenant within the time limits set out in the *Regulation*.

Residential Tenancy Policy Guideline 17: Security Deposit and Set off explains that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit has been extinguished, the party who breached their obligation first will bear the loss.

The tenant's evidence about the sequence of events at the end of the tenancy was not consistent; the female landlord's was. As a result, where there is a conflict between the landlord's and the tenant's testimony, I prefer the landlord's.

Part of the tenant's own evidence is that she did have a conversation with the female landlord wherein she advised that she was not ready for the inspection at that time. It is unlikely that the tenant would have agreed to the inspection taking place before she had an opportunity to clean the carpets, which she did not do until after 1:00 pm on March

31. This is consistent with the female landlord's testimony that she went to the rental unit around noon on March 31 for the purposes of conducting the inspection. In her written statement the tenant stated that when she went to the rental unit on the Monday morning she did so with the intent of being able to conduct the move-out inspection.

I find that the parties had agreed to a date and time for the move-out inspection but the tenant was not ready and a different date was agreed upon.

Although the landlord did not serve the tenant with a notice in the prescribed form for the inspection on April 1 that was not necessary, because the parties came together at that time, as arranged, for the purpose of conducting the move-out inspection.

The evidence is that the tenant left before the conclusion of the inspection. This is not participation in the inspection.

As the tenant did not participate in either occasion she has forfeited her right to the return of the security deposit. The tenant's claim is dismissed.

Conclusion

The tenant's claim 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: June 11, 2015

Residential Tenancy Branch

