



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep a portion of the Tenants’ security deposit for damages to the rental unit, and to recover the filing fee from the Tenants.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. However, there was no appearance by the Tenants during the 17 minute duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord explained that after the tenancy ended, the Tenants provided him with a forwarding address as documented on the move-out Condition Inspection Report (the “CIR”) on December 1, 2014. As a result, the Landlord registered mailed a copy of the Application and the Notice of Hearing documents to each Tenant on December 10, 2014. The Landlord provided a copy of each Canada Post tracking number as evidence for this method of service.

Section 90 of the Act states that documents served by mail are deemed to have been received five days after they are mailed. A party cannot avoid service by a failure or neglect to pick up mail and this reason alone cannot be used to make a review application. Based on Landlord’s testimony and registered mail evidence, I find the Landlord served the Tenants in accordance with Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”) and these are deemed to have been received by the Tenants on December 15, 2014.

As a result, I continued to hear the Landlord’s evidence in relation to his claim to keep a portion of the Tenants’ security deposit.

Issue(s) to be Decided

- Is the Landlord entitled to keep the remainder of the Tenants' security deposit in full satisfaction of a monetary claim for damages to the rental suite?

Background and Evidence

The Landlord testified that this tenancy started on October 1, 2014 for a fixed term period of six months. However, the parties agreed to mutually end the tenancy on November 30, 2014. Monthly rent was \$1,200.00 and the Tenants paid \$600.00 as a security deposit at the start of the tenancy.

The Landlord testified that he completed a move in CIR with the Tenants on October 2, 2014 and a move out CIR on December 1, 2014. The Tenants provided their forwarding address to the Landlord which was recorded on the move out CIR on December 1, 2014. The Landlord testified that on December 2, 2014 he returned \$210.83 of the Tenants' security deposit and applied on December 5, 2015 to keep the remainder of \$389.17 in full satisfaction of his monetary claim.

The Landlord testified that the Tenants failed to clean the rental suite at the end of the tenancy. As a result, the Landlord had to employ a cleaning company at a cost of **\$300.00** to clean the rental unit. The Landlord testified that the company was owned by his wife and that the work was done at a reduced rate rather than employing a company that would have charged a lot more.

The Landlord testified that the Tenants had damaged the front door blind which had to be replaced at a cost of **\$39.17**. The Landlord also testified that the Tenants had damaged a bedroom closet door and a bedroom door which were repaired at a cost of **\$50.00**. The Landlord testified that the Tenants had orally acknowledged that they had caused the damage to the doors and blinds during the move out CIR.

The Landlord provided photographic evidence indicating the damage to the doors and blinds as well as areas of the home that had not been cleaned. The Landlord also pointed to the CIR which documented the lack of cleaning as indicated by the "DT" codes as well as the damages being claimed. The Landlord provided invoices for the three claim amounts being sought in the Application.

At the conclusion of the hearing the Landlord withdrew his request for the filing fee citing the fact that he only wants to keep the remainder of the Tenants' deposits.

Analysis

The Landlord made the Application on December 5, 2014 after receiving the Tenants' forwarding address on December 1, 2014. Therefore, I find the Landlord applied to keep the Tenants' security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* explains that a CIR can be used as evidence of the state of repair and condition of the rental suite unless there is a preponderance of evidence provided by the parties to suggest otherwise.

In this case, I find that on the balance of probabilities, the Tenants failed to comply with Section 37(2) of the Act. I accept the Landlord's undisputed oral testimony, the photographic evidence, and the CIR that the Tenants failed to clean the rental suite at the end of the tenancy and caused damage which was not rectified. I also find that the Landlord verified the costs by providing invoices relating to the amounts being claimed.

As a result, the Landlord is awarded the costs claimed in the amount of **\$389.17** (\$300.00 + \$50.00 + \$39.17). As the Landlord already holds this amount in the Tenants' security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in full satisfaction of the claim awarded.

Conclusion

The Tenants failed to leave the rental unit reasonably clean and undamaged. The Landlord may keep the remainder of the Tenants' security deposit he currently holds in the amount of \$389.17 in full satisfaction of the monetary claim.

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: July 14, 2015

Residential Tenancy Branch

