



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for utilities, for money owed or compensation for loss or damage under the Act, for an order to retain the security deposit in full satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions. However, the landlord provided a MLS document in evidence to the Residential Tenancy Branch, this document was not provided to the tenants. As a copy of the MLS document was not provided to the tenants and is not relevant to the issues before me. The MLS document was excluded.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the landlord’s agent withdrew their claim for utilities. Since the tenants appear and were prepared to argue this matter. I find it appropriate to dismiss this portion of the claim without leave to reapply.

Issues to be Decided

Is the landlord entitled to monetary order for money owed or compensation for loss or damage under the Act?

Is the landlord entitled to retain the security deposit in full of the claim?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2014. Rent in the amount of \$2,700.00 was payable on the first of each month. The tenants paid a security deposit of \$1,350.00. The tenancy ended on December 31, 2014.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Cleaning costs	\$ 350.00
b.	Filing fee	\$ 50.00
	Total claimed	\$ 400.00

The landlord's agent testified that at the end of the tenancy the tenant were not ready to return the unit to them until approximately 7 pm. The agent stated that there was still a lot of cleaning that had to be done, which the tenant acknowledged in the move-out condition inspection report.

The tenant GH testified that there were some minor things that were left, such as wipe the kitchen countertop down. The tenant stated landlord has altered the move-out inspection after it was signed as in box Z on page 3 of the report they added "Trash remain in the property".

The tenant PH testified that there is no requirement under the Act that requires a tenant to have the rental unit professionally cleaned as written in the comment section of page 2 of the move-out condition inspection report. PH stated the rental unit was left reasonable clean as required by the Act.

The witness JS testified that the rental unit was not cleaned when they moved in and it was left in a much cleaner stated than it was received.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I have reviewed the move-out condition inspection report, I find the report is not completed properly by the landlord, as on page 2, the landlord has simply placed a line through the entire comment section and indicates it needs to be professionally cleaned.

Although the landlord's agent testified that the tenant agreed to the condition of the rental unit and cleaning cost. That is not reflected in the report, as box 1 – End of Tenancy, was not completed as to whether or not the tenants agreed that the report fairly represents the condition of the rental unit..

Further, I have reviewed the landlord's copy of the report submitted in evidence and compared it with the tenants' copy. The landlord's copy has been altered to add "trash remain in the property", which lead me to question the credibility of the landlord.

I find with the above noted deficiency, I can apply little weigh, if any, to the move-out condition inspection report.

Therefore, as both parties have provided a different version of the state of cleanliness, I find without further evidence from the landlord, such a photographs of the rental unit at the end of the tenancy that they have failed to prove the tenants' breached section 37 of the Act. The tenants are only responsible to leave the rental unit reasonable cleaned, not professional cleaned as the move-out condition inspection report suggests. Therefore, I dismiss the landlord's claim for cleaning.

As the landlord was not successful with their application, they are not entitled to recover the filing fee from the tenants.

Since the landlord has no authority under the Act to retain any portion of the tenants' security deposit, I grant the tenants a monetary order for the return of the security deposit in the amount of **\$1,350.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord was not requesting to retain the full amount of the security deposit in their application. Neither party provided evidence that any portion of the security deposit had been returned to the tenants' prior to the hearing. However, if any portion of the security deposit has been returned by the landlord, the tenants are obligated to deduct that amount from the above monetary award.

Conclusion

The landlord's application is dismissed.

The tenants are granted a monetary order for the return of the security deposit.

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 31, 2015

Residential Tenancy Branch