



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee. Tenant "DS" attended the hearing and gave affirmed testimony.

The tenant testified that she was served with the landlord's application for dispute resolution and notice of hearing (the "hearing package"). However, despite scheduling of the hearing in response to the landlord's application, the landlord did not appear.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on April 01, 2014, even while the tenant testified that possession of the unit began sometime between mid to late March 2014. Monthly rent is \$1,450.00, with \$725.00 due and payable on the 1st of the month, and the balance of \$725.00 due on the 15th of the month. A security deposit of \$725.00 was collected. While there is a move-in condition inspection report in evidence which bears a landlord's signature, the report does not bear a tenant's signature, and the tenant testified that the report was not completed with the participation of both parties. Additionally, there is no evidence that the landlord offered the tenants "at least 2 opportunities, as prescribed, for the inspection," pursuant to section 23 of the Act. Further, the tenant testified that she only received a copy of the move-in condition inspection report after tenancy ended, along with other documentary evidence provided by the landlord for the purposes of the hearing.

Following notice given by the tenants, tenancy ended effective February 28, 2015. Once again, while there is a move-out condition inspection report in evidence which bears a landlord's signature, the report does not bear a tenant's signature, and the tenant testified that the report was not completed with the participation of both parties. Additionally, there is no evidence that the landlord offered the tenants "at least 2 opportunities, as prescribed, for the inspection," pursuant to section 35 of the Act. As the move-in and move-out condition inspection reports are both completed on one 4 page document, again, the tenant only received a copy of the move-out condition inspection report after tenancy ended, along with other documentary evidence provided by the landlord for the purposes of the hearing.

By letter dated March 09, 2015, the tenants formally provided the landlord with their forwarding address for the purposes of repaying their security deposit. However, as the landlord had determined that certain cleaning and repairs were required in the unit as a result of the tenancy, the landlord declined to repay the full deposit and, instead, filed an application for dispute resolution on March 12, 2015, seeking to retain a total of \$450.00 from the security deposit, as follows:

\$300.00: *miscellaneous repairs*

\$100.00: *cleaning*

\$50.00: *filing fee*

The tenants dispute the landlord's claim that repairs deemed necessary by the landlord were the result of something beyond reasonable wear and tear. The tenants also claim that they had undertaken to leave the unit reasonably clean by the time tenancy ended.

Analysis

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, section 37 of the Act addresses **Leaving the rental unit at the end of tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, and in the absence of the comparative results of move-in and move-out condition inspection reports completed with the participation of both parties, I find that the landlord has failed to meet the burden of proving that the unit was not left “reasonably clean, and undamaged except for reasonable wear and tear.” In the result, I find that the landlord’s application for costs associated with cleaning and repairs must be dismissed. As the landlord has not succeeded with the principal aspect(s) of the application, I find that the application for recovery of the filing fee must also be dismissed.

Following from all of the above, I **ORDER** that the landlord repay **FORTHWITH** the tenants’ full security deposit in the amount of **\$725.00**, and I hereby issue a **monetary order** in favor of the tenants to that effect.

Conclusion

The landlord’s application is hereby dismissed in its entirety.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$725.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and 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: August 26, 2015

Residential Tenancy Branch

