



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, compensation for or loss or damage under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 28, 2015 in accordance to section 89 of the Act. The Landlord said the package was returned as the Tenant had moved again and did not provide the Landlord with the new address. The hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is there damage to the unit, site or property?
2. Is there a loss or damage and if so how much?
3. Is the Landlord entitled to compensation and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started in August of 2012 as a month to month tenancy. Rent was \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00. The Landlord said the Tenant moved out of the rental unit in April, 2015.

The Landlord said they did not complete a move in condition inspection report or a move out condition inspection report at the start or end of the tenancy, but did complete the report for the hearing. The condition inspection report does not have the Tenant's signature on it and was not complete with the Tenant in attendance.

The Landlord continued to say the rental unit was damaged when the Tenant move out so they are applying to retain the security deposit to cover the damages. The Landlord said the Tenant's cat damaged the trim on the doors, there were 2 missing cupboard doors, a burn mark on the counter top and the base boards were missing. The Landlord said they are applying for \$500.00 in total of which \$375.00 of the \$500.00 is to retain the Tenant's security deposit. The Landlord said they did not submit any evidence to support their claims except the condition inspection report done May 7, 2015 after the Tenant was gone.

Analysis

Sections 23 and 24 explain the requirements and consequences for landlords and tenants with respect to move in condition inspection reports. They are as follows:

Condition inspection: start of tenancy or new pet

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 *opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is

extinguished if the landlord

(a) does not comply with section 23 (3) [2 *opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept the evidence and testimony as provided to the by Landlord that he did the condition inspection without the Tenant after the tenancy for the hearing. The Landlord thought this was the correct thing to do. The Arbitrator told the Landlord the condition inspection report is not valid as the Landlord did not comply with the Act when completing it. As a result the Landlord's claim against the Tenant's security deposit is **extinguished** and as the Landlord did not provide any evidence to support his damage claims the Landlord has not established grounds for any compensation. I dismiss the Landlord's application to retain the Tenant's security deposit and for compensation for damage to the unit.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of \$50.00 for the filing fee for this proceeding which he has already paid.

Conclusion

The Landlord's application is dismissed without leave to reapply.

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: October 28, 2015

Residential Tenancy Branch

