



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit and for an order to retain the security deposit in partial 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 and there were no disputes in relation to review of the evidence submissions.

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.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began August 2012. Rent in the amount of \$850.00 was payable on the first of each month. The tenant paid a security deposit of \$425.00. The tenancy ended April 2015.

The landlord's agent testified that the tenant left a lot of garbage stacked outside which had to be taken to the dump and disposed of. The landlord stated that they are unable to provide a copy of the invoice due to a fire.

The landlord testified that the entire rental unit needed to be cleaned, which included the stove and oven.

The landlord's agent testified that the tenant also left the carpets dirty and stained.

The tenant testified that they did leave some garbage neatly stacked for by the garbage can to be taken with the garbage. The tenant stated that they have never had a problem with the garbage company taking the garbage when it was bagged and stacked nicely.

The tenant testified that the landlords also left a lot of building material outside the rental unit from the renovations they completed on the upper unit and should not be responsible for any cost related to the removal.

The tenant testified that they did not clean the carpets at the end of the tenancy, but they were thoroughly vacuumed.

The tenant stated the landlord has no verification of any money being paid for any of the items claimed and the rental property changed legal ownership on the last day of their tenancy.

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.

In this case, the landlord is claiming for garbage removal; however, the landlord has provided no receipt or any other information on how they arrived at the amount of \$150.00. I find the landlords have failed to provide sufficient evidence to support this portion of their claim. Therefore, I dismiss this portion of the landlords' claim.

Further, the landlords are claiming for cleaning cost and carpet cleaning; however, there is no evidence that the landlords suffered any loss as the new property owners took possession of the property. Further, I find the photographs submitted as evidence are not sufficient to prove the tenant failed to leave the rental unit reasonably clean. I find the landlords have failed to provide sufficient evidence to support this portion of their claim. Therefore, I dismiss this portion of the landlord's claim.

Therefore, I dismiss the landlords' application. Since the landlord was not successful with their application they are not entitled to recover the filing fee from the tenant.

As the landlords' application to retain the tenant's security deposit has been dismissed, I order that the landlords to return to the tenant the security deposit of **\$425.00**.

Should the landlords fail to comply with my order, I grant the tenant an order under section 67 of the Act for their security deposit of **\$425.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords' application is dismissed. The tenant is granted a monetary order should the landlords fail to return the security deposit as ordered

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: November 30, 2015

Residential Tenancy Branch

