



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* ("the Act") for an order to retain the tenants' security deposit pursuant to section 38 of the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties agreed to receipt of each other's materials for this hearing.

Issue(s) to be Decided

Are the landlords entitled to retain the tenant's security deposit?

Background and Evidence

The parties agreed that this one year fixed term tenancy began on June 15, 2014 and continued until June 15, 2015. The rental amount of \$1300.00 was payable on the first of each month. The tenants have now vacated the rental unit and the landlords testified that they continue to hold the \$650.00 security deposit and the \$650.00 pet damage deposit paid by the tenants at the outset of this tenancy (June 15, 2014).

The landlord has applied to retain a portion of the security and pet damage deposit for a total of \$900.00 as a result of damage to the hardwood floors within the rental unit. The landlord also sought to recover the filing fee for this application.

The landlords both testified that no condition inspection reports were completed before or after this tenancy. Landlord TT testified that he attended the rental unit on or about the last day of their tenancy, June 15, 2015. He testified that, on that date, the lights were dim, the blinds were shut and it was difficult to tell if there was any damage to the unit. Landlord JB testified that the tenants had a very large (165 lb) dog and that she

believed that, as the dog jumped on the couch over the course of the tenancy, the hardwood floor was scratched. Landlord TT testified that, on attending to the residence on another, more well-lit time and date, he realized that the hardwood floor had extensive damage. Both landlords testified that they received an estimate and had the damage to the floor repaired. They testified that they did not claim the full cost of the floor repair. They did not submit estimates or receipts in their materials.

The tenants both adamantly denied that any damage had been done to the rental unit. Tenant CE testified that he cleaned the unit thoroughly on move-out and that no one in the residence had caused damage to the rental unit floors over the course of the tenancy. Tenant CL testified that both tenants had cleaned and returned the keys several days prior to the end of the one year term. He testified that, when Landlord TT attended the residence, the blinds were open and the lights were on. He testified that the tenants had hired cleaners to ensure the unit was cleaned to the satisfaction of the landlords. The tenants submitted a cleaning company receipt dated July 8, 2015 as evidence of the cleanliness of their unit at the time of move-out. He testified, with detail that Landlord TT and the tenants conducted a walk through inspection of the unit lasting at least 15 minutes. He provided sworn testimony that Landlord TT stated, "don't worry, you'll get your deposit back." Tenant CL testified that 7 days after he and Tenant CE had vacated the residence the landlords contacted the tenants claiming damage to the floors.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. The landlord's claim must meet the standard of proof under the *Act* and accord with the provisions relating to security and pet damage deposits.

Under section 67, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. I find that the claimants here (the landlords) have provided insufficient proof that damage to the hardwood floors did not exist prior to the tenants move-in and did exist as a result of their tenancy.

If a claimant is able to establish the existence of damage and the responsibility of the respondents, the claimant must then also show the actual loss or damage by way of verifiable proof. Even if I found that the landlord's had sufficiently shown damage to their

unit as a result of this tenancy, I do not find that they have provided proof to substantiate a verifiable and recoverable loss. The landlords did not provide any estimates or receipts to support their claim for the repair of floor damage.

Specifically with respect to security deposits, section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant claimed the unit was full cleaned and without damage. The landlord claimed that the unit was somewhat dirty and that the hardwood floors were damaged. The photographic evidence provided shows a scratch on a floor, a dog and a relatively clean looking unit.

It is worth noting that when disputes arise as to the changes in condition between the start and end of a tenancy, move-in condition inspections and inspection reports are very useful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

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...*

Section 24(2) of the *Act* explains the consequences for the landlord if the condition inspection reporting requirements are not met;

24 (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 find that while the landlords and tenants may have conducted a “walk through” at the start and end of this tenancy, the landlords did not complete a joint condition inspection

report with the tenants. Nor did the landlords create any record of condition inspection at move-out in or move out, documenting the dates and condition of the unit. In fact, in testimony, the landlord was unable to be certain of the date that he conducted the walk through inspections at move-in or move-out. Several days after the “walk through” and end of tenancy, the landlord claimed \$900.00 of damage to the floor in the rental unit. The landlords provided insufficient evidence to support the claim of damage to the floor in the unit.

Since I find that the landlord did not meet the requirements of the *Act* regarding the joint move-out condition inspection and inspection report, I find that the landlord’s eligibility to claim against the security deposit for damage arising out of the tenancy is limited.

Based on the lack of written quotes or supporting photographic evidence of the landlords, I find that the landlords have not proven on a balance of probabilities that the rental unit had damage caused by the tenants. For that reason, I find that the landlords are not entitled to a monetary award pursuant to section 67 of the *Act* and I dismiss the landlords’ claim in its entirety.

Conclusion

I dismiss the landlords’ claim in its entirety. I order the landlord to return the tenants’ remaining security and pet damage deposit plus any interest to the tenants forthwith.

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: December 08, 2015

Residential Tenancy Branch

