



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 1, 2015. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400.00. The tenancy ended on June 30, 2015. The tenant gave the landlord her forwarding address in writing on July 3, 2015. On July 31, 2015, the tenant applied for recovery of her security deposit. The landlord applied for monetary compensation on October 29, 2015. The landlord did not do a move-in or move-out inspection with the tenant.

Landlord's Evidence

The landlord stated that at the end of the tenancy the tenant left the rental unit dirty and damaged. The landlord stated that he attended at the unit on June 29, 2015 to do a move-out inspection with the tenant, but the tenant did not attend. The landlord stated that the tenant did not return the keys, so he had to buy new locks. The landlord stated that there were nail holes and paint chips in the walls and the carpet needed cleaning.

The landlord claimed \$95.18 for two new locks; \$53.74 to rent the carpet cleaning machine and buy carpet shampoo; \$40.00 for labour to clean the carpet; and \$130.00 for labour and materials to fix two walls. The landlord stated that the tenant told him he could pay the balance of the security deposit to the tenant's ex-husband, and on July 14, 2015 the landlord tried to give a cheque for \$81.08 to the tenant's ex-husband.

Tenant's Evidence

The tenant applied for double recovery of the security deposit. The tenant stated that she gave the landlord her forwarding address on July 3, 2105 but he did not return her security deposit.

In regard to the landlord's claim, the tenant stated that any damage was general wear and tear, the unit was very worn at the beginning of the tenancy and the carpets were dirty and stained. The tenant acknowledged that she did put a couple of anchors in the wall. The tenant stated that she sent her keys back to the landlord through her ex-husband.

Analysis

Landlord's application

The tenant acknowledged that she put a couple of anchors in the wall. The tenant did not provide sufficient evidence to show that she returned the keys in a timely manner. I find that the landlord is entitled to costs claimed for repairing the walls and changing the locks. The landlord did not do a move-in inspection and complete a condition inspection report with the tenant, and he therefore cannot establish an agreed-upon condition of the unit at the beginning of the tenancy. The tenancy was only five months in length, and there was no written agreement that the tenant must clean the carpets at the end of the tenancy. I therefore find that the landlord is not entitled to costs claimed for cleaning or carpet cleaning.

Tenant's Application

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out a move-in inspection or complete a condition inspection report, he lost his right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on July 3, 21015 but did not return the full security deposit within 15 days of that date. I accept the landlord's evidence as likely that the tenant did agree to let the landlord pay the balance of the security deposit to the tenant's ex-husband, given that the tenant stated she sent her keys back through her ex-husband.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenant's full security deposit within 15 days of having received her forwarding address, section 38 of the Act requires that the landlord pay the tenant double the withheld amount of the deposit. The tenant is therefore entitled to \$637.84 (double the withheld amount of \$318.92), plus \$81.08 (the amount that the landlord attempted to return in time).

Filing Fees

As both the landlord's and the tenant's applications were partially successful, I find that the parties must bear their own filing fee costs.

Conclusion

The landlord is entitled to \$225.18. The tenant is entitled to \$718.92. I grant the landlord an order under section 67 for the balance due of \$493.74. This order may be 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: March 2, 2016

Residential Tenancy Branch