



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. The landlord, the tenant and a witness for 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 September 1, 2013 as a fixed-term tenancy of one year. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$750.00. The landlord did not do a move-in inspection or complete a condition inspection report with the tenant.

The parties contemplated a second fixed term, but did not enter into a written agreement. The tenancy ended on August 1, 2015. The tenant gave the landlord her forwarding address in writing on August 6, 2015. The landlord filed their application to keep the security deposit on August 19, 2015.

Landlord's Evidence

The landlord stated that when the tenant complained about the dishwasher and the washing machine, the landlord responded and within 24 hours they ordered a new dishwasher and washer/dryer. The landlord stated that the tenant never told the landlord that there was anything wrong with the electrical and lights, and she never mentioned that the ducts needed cleaning. The landlord stated that they told the tenant they would pay for a car that was towed when the tenant gave them the receipt.

The landlord stated that the tenant caused damage by changing out light fixtures, fans and switches; she broke a fan that cannot be fixed and caused electrical issues; she took down a towel rack; she painted some walls purple and turquoise; and she took custom-made blinds and put them in the carport. The landlord stated that the rental unit required cleaning after the tenant vacated.

The landlord stated that they made a verbal agreement with the tenant that if she vacated the rental unit by July 31, 2015, released her claim on the security deposit and allowed the landlord to use one of the sheds on the property for two weeks before the end of the tenancy, she could have July rent-free.

In support of their claim, the landlord submitted photographs, invoices and quotes. In their monetary order worksheet, the landlord indicates that their full claim totals \$1259.75. However, in their application the landlord has only claimed \$750.00, the amount of the security deposit. The landlord did not reconcile these amounts.

Tenant's Evidence

The tenant acknowledged that she removed the brickwork flowerbed and she took the blinds down. The tenant stated that on one light fixture she pulled the fan cord and the light came down, and this damage was merely wear and tear. The tenant acknowledged that she broke a light in the kitchen and could not get a replacement so she had to replace the whole set. The tenant stated that her brother is an electrician, and he did all of the electrical work. The tenant stated that she was not asking for reimbursement for duct cleaning.

In regard to general cleaning, the tenant and her witness stated that they cleaned everything except the oven and possibly under the fridge.

The tenant claimed double recovery of the security deposit, as well as \$750.00 for allowing the landlord to use the shed; \$127.38 for towing the car; and \$344.40 for duct and vent cleaning.

Analysis

Landlord's application

The tenant acknowledged removing the brick flowerbed and the blinds. She also acknowledged painting the walls purple and turquoise; replacing the kitchen lights and allowing her brother to do electrical work without consulting the landlord; and not cleaning the oven. I therefore find that the landlord is entitled to compensation for these items, the total of which exceeds \$750.00. As the landlord did not amend their application and increase their claim to match the amount set out on their monetary order worksheet, I therefore find that the landlord is limited to an award not greater than \$750.00.

Tenant's Application

The landlord stated that they would pay for the towing cost, and I find that the tenant is entitled to \$127.38 for towing.

The tenant failed to show any cost she incurred for allowing the landlord to use the shed, and she is therefore not entitled to any compensation for the landlord's use of the shed. The tenant did not make any request of the landlord regarding duct cleaning, and she therefore is not entitled to compensation for that bill.

In regard to the security deposit, 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, they lost their 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 August 6, 2015 but did not return the security deposit within 15 days of that date.

Further, when a landlord's right to claim the security deposit for damage is extinguished, a landlord cannot obtain the tenant's written consent to keep any part of the deposit.

Therefore landlord's argument that they were entitled to retain the security deposit because of their verbal agreement with the tenant is not valid.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and they failed to return the tenant's 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 amount of the deposit. I therefore grant the tenant double recovery of the security deposit, in the amount of \$1,500.00.

Filing Fees

As both applications were partially successful, I decline to award either party recovery of the filing fee for the cost of their applications.

Conclusion

The landlord is entitled to \$750.00. The tenant is entitled to \$1,627.38. I grant the tenant an order under section 67 for the balance due of \$877.38. 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 18, 2016

Residential Tenancy Branch