



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD MND FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenants. The landlord and both tenants 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 December 1, 2012. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$500.00 and a pet deposit of \$300.00. On December 10, 2012, the landlord and the tenants carried out a move-in inspection and completed a condition inspection report.

The tenancy ended on September 30, 2015. On that date, the landlord and the tenants carried out a move-out inspection. The tenants gave the landlord written permission to retain up to \$93.54 for the cost of additional carpet cleaning. The tenants provided the landlord with their forwarding address in writing on October 15, 2015 and the landlord applied to keep the security and pet deposits on that date.

Landlord's Evidence

The landlord stated that they had the carpet re-cleaned and deodorized after the tenants moved out, but it still smelled strongly of pet odour. The landlord stated that

they had to remove and replace the carpets as a result. The landlord did not provide the age of the carpets.

The landlord stated that the tenants painted the kitchen cupboards and wall with latex over oil-based paint, and two weeks after the end of the tenancy the paint was peeling off. The landlord stated that these areas would have to be prepped and re-painted. The landlord did not submit any quotes or invoices for this work.

The landlord claimed \$800.00, the amount of the two deposits, and stated that they spent far more than this amount.

Tenants' Evidence

The tenants stated that the carpets were old, worn and stained in some areas when they moved into the rental unit. The tenants submitted a copy of the move-in inspection report to show this assessment.

The tenants stated that the landlord gave the tenants permission to paint, and they painted one year before the end of the tenancy. The tenants stated that the paint was chipped when they moved in. The tenants stated that there was a significant problem with mold growing on the windows, which the tenants reported but the landlord never remedied.

The tenants stated that they did not receive the move-out inspection report from the landlord within 15 days of the inspection. The tenants stated that the landlord added in additional comments on the move-out condition inspection report after the landlord's final approval. The tenants claimed \$1,508.00, representing double the security and pet deposits, less \$92.00 for the additional carpet cleaning.

Analysis

Landlord's application

I find that the landlord has failed to provide sufficient evidence to establish that the tenants should pay for replacement of the carpeting. The landlord did not provide an age for the carpet, and the move-in condition inspection report indicates that the carpet was already old and worn at the beginning of the tenancy. As set out in Residential Tenancy Policy Guideline 41, the average useful life of carpeting is 10 years. The landlord provided no evidence of the age of the carpets that were replaced, and I

therefore cannot determine if the landlord is entitled to a depreciated amount or not. I therefore dismiss this portion of the landlord's claim.

The tenants acknowledged that they did some painting. Regardless of whether they had the landlord's permission to paint, a tenant must return the unit to the landlord in a reasonable condition or pay for the cost to restore the unit to a reasonable condition. I accept the landlord's evidence that the paint that the tenants applied on the kitchen cabinets and wall were peeling. However, the landlord did not provide any quotes or invoices for this work, and did not provide a breakdown of their claim to distinguish between the claim for the carpets and the claim for painting. I therefore find that the landlord is only entitled to a nominal award of \$50.00 for painting.

Tenants' Application

A landlord must provide the tenant with a copy of the move-out condition inspection report within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. If the landlord fails to do so, their claim against the security or pet deposit for damage to the property is extinguished. When a landlord's right to claim against the deposit(s) is extinguished, under section 38 of the Act the landlord cannot obtain the tenant's written permission to keep any part of the deposit(s).

In this case, I find that the landlord did not return the move-out condition inspection report, in an unaltered state and in its entirety, within 15 days of having received the tenants' forwarding address in writing. Therefore, the landlord lost their right to claim the security and pet deposits for damage to the property.

The landlord was required to return the security and pet deposits to the tenants within 15 days of receiving the tenants' written forwarding address, but did not do so. Section 38 of the Act requires that the landlord pay the tenant double the amount of the deposit. Because the landlord's right to claim the deposits was extinguished, the landlord could not obtain the tenants' written consent to keep any part of the deposits. The tenants are therefore entitled to \$1,600.00.

As the tenants' application was successful, they are entitled to recovery of the \$50.00 filing fee for the cost of their application.

Conclusion

The landlord is entitled to \$50.00. The tenants are entitled to \$1,650.00. I grant the tenants an order under section 67 for the balance due of \$1,600.00. 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: May 30, 2016

Residential Tenancy Branch