



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnsd, mnr, mndc, ff

Introduction

The landlords apply for dispute resolution, and request a monetary order for loss of rental income, cleaning costs, repairs costs, and an order to retain the security deposit. The tenant applies for an order to recover double the security deposit, and costs of carpet cleaning.

Both parties attended the hearing, and provided testimony and made submissions. There were no issues raised as to the exchange of each other's evidence packages.

Issues to be decided

1. Are the landlords entitled to an award for recovery of their claimed losses and costs, and if so, should the deposits be applied towards such award?
2. Is the tenant entitled to the return of his security deposit, and to recovery of costs to clean carpets?

Background and Evidence

Some of the evidence is in dispute, with both parties alleging untruthfulness on the part of the other. I find, however, that the following facts exist:

1. The landlords and tenant signed a written tenancy agreement on April 30, 2015, for a tenancy to commence May 1, 2015. The written agreement specified that the tenancy was a fixed term tenancy for one year, ending on April 30, 2016. The parties specifically initialled a clause in the agreement that stated the tenant must move out at the end of the fixed term. Rent was \$1,000.00 per month, payable of the 1st day of each month. A security deposit of \$500.00 was paid.
2. No condition inspection report was prepared by the landlord at the start of the tenancy.
3. On December 29, 2015, the tenant gave a written notice to the landlord of his intention to move out on January 31, 2016. The tenant also prepared and signed two "Mutual Agreement to End a Tenancy" documents dated December 29, 2015 and January 31, 2016, to end the tenancy January 31, 2016 and February 31, 2016 respectively. The landlords declined to sign either agreement, and advised the tenant by email on December 30, 2016 and again in writing on January 31, 2016 that the tenancy expired April 30, 2016.
4. The tenant moved out in the last week of February, 2016.
5. A move out inspection occurred March 7, 2016, and a report letter of the landlord was subsequently mailed to the tenant.
6. The last rent paid by the tenant was for February, and no further rent payment was made.

The landlord's evidence is that the premises were clean and in need of no repair when the tenancy began, but that significant damage occurred during the tenancy. The landlord has estimated that costs of such cleanup and repair, along with recovery of lost rent for March and April totals \$10,588.00.

The tenant's evidence is that the premises were in very poor condition when the tenancy started, and that he repeatedly asked for repairs. Although he signed the written agreement for a one year tenancy, the landlord was well aware that he intended to stay for only 9 months, and the landlord agreed verbally that the tenant could move out then. No move in inspection was ever done, and no move out condition report was ever provided into evidence. The tenant's photographs provide proof of some pre-existing damage to the premises. The landlord is simply attempting to renovate at the tenant's expense.

Analysis

The Residential Tenancy Regulation requires that tenancy agreements be in writing, and the tenant knew or should have known he was bound by the written fixed term agreement he signed. During a fixed term tenancy, neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. The fact the tenant prepared two "Mutual Agreement" is highly suggestive that the tenant was well aware that he was bound by his written agreement and that a written notice was insufficient and ineffective to end the tenancy prior to the end of the fixed term. Accordingly, I agree with the landlord that the tenant is liable for the landlord's loss of rent to the end of the fixed term. The landlord is awarded the sum of \$2,000.00 as recovery of lost rent for March and April.

The landlord knew or should have known of his responsibility to conduct an inspection of the premises at the start of the tenancy, and to prepare a condition inspection report that accurately reflected the condition. The landlord has provided no photographs that clearly demonstrate the condition at the start of the premises. In failing to do so, the landlord has provided no detailed, baseline framework of the condition of the premises at the start of the tenancy. There is competing evidence by the parties as to the state of the premises at the start of the tenancy, and as the landlord failed in his statutory duty to provide an inspection report from the start of the tenancy, and failed to provide sufficient detailed evidence of the condition, I find that the landlord has failed to prove that there was no damage or need for repair of any kind when the premises began. I therefore prefer the tenant's evidence over that of the landlord, in terms of the issue of repair to the premises at the end of the tenancy. While it possible that damage was done by the tenant, it is equally possible on the evidence before me that the need for repair pre-existed this tenancy. The various claims for repair are dismissed as unproven.

In terms of cleaning, I deny the tenant's claim for costs of cleaning or shampooing the carpets. The tenant has provided no proof of any costs incurred in this regard, and had an ongoing responsibility to clean the premises through the course of the tenancy. The tenant has provided no photographs that show the condition of the premises at the start, and to verify that the carpets needed cleaning prior to him moving in. While it possible that cleaning was required, and was performed by the tenant, it is equally possible on the evidence before me that the carpets were sufficiently clean at the start of the tenancy. The tenant's claim for reimbursement for his cleaning is dismissed as unproven.

Although most of the landlord's claim is not proven, I accept that his photographs provide sufficient and clear evidence of a failure by the tenant to clean the stove and oven prior to vacating the premises. The photographs are clear that this appliance required many hours of cleaning to become useable again, and the tenant is held responsible for failing to properly keep the stove and oven clean. The landlord has elected to replace the appliance, and as it was not new at the start of the tenancy, I find it appropriate to assess its depreciated value at the start of the tenancy at \$360.00 (half the value of a new stove). The tenant is found liable for this sum.

In sum, the landlord is awarded \$2,360.00 plus recovery of his filing fee of \$100.00, for a total of \$2,460.00. The balance of the landlord's claim is dismissed.

The landlord's right to claim the security deposit from the tenant is extinguished pursuant to section 24(2) of the Residential Tenancy Act, as a result of a failure to prepare a condition inspection report at the start of the tenancy. Accordingly the tenant is awarded recovery of the \$500.00 deposit plus recovery of his filing fee of \$100.00, for a total of \$600.00. The balance of the tenant's claim is dismissed.

As both parties are awarded compensation from the other, it is appropriate to set off one award from the other. This ultimately results in the sum of \$1,860.00 owed by the tenant to the landlords. A monetary order for this sum is made in favour of the landlords.

Conclusion

The landlords may retain the deposit as part of the set off noted above, and a monetary order is issued to the landlords in the sum of \$1,860.00, representing the further sum owed by the tenant to the landlords.

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: June 06, 2016

Residential Tenancy Branch