



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESTMARK HOLDINGS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed to retain the Tenant's security and pet deposits and to recover the filing fee for this proceeding.

The Tenant filed for the return of the security and pet deposits and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on November 19, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on January 13, 2016, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to retain the Tenant's security and pet deposits?

Tenant:

1. Is the Tenant entitled to recover the security and pet deposits?

Background and Evidence

This tenancy started on April 12, 2014 as a fixed term tenancy with an expiry date of April 30, 2015. Rent was \$2,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,250.00 and a pet deposit of \$1,250.00 on April 1, 2014. The Landlord said a move in condition inspection report was completed on April 11, 2014 and a move out condition inspection report was completed on October 31, 2015. The Tenant said the condition inspection reports do not comply with the Act and regulations therefore the reports are invalid and as a result the Landlord's claims on his deposits are extinguished. The Tenant continued to say he gave the Landlord his forwarding address on October 31, 2015 on the move out report.

The Landlord said they have been using this report for a number of years and she believes the report to be valid. The Arbitrator questioned the Landlord why the reports in the Landlord's evidence package and the Tenant's evidence package were different. The Landlord said she added items after the report was completed with the Tenant because she saw more damage to the unit. The Landlord said the damages she found and her claims are as follows:

1. Damage to the refrigerator	\$ 412.00
2. Damage to the floors	\$ 420.00
3. Repair and paint walls	\$ 262.50
4. Carpet repairs	\$ 42.00
5. Mirror door damage	\$ 78.75
6. Missing light bulb	\$ 6.30
7. Closet shelf damage	\$ 21.00
8. Canada post costs	\$ 10.50
Total	\$1,253.05

The Landlord continued to say that not all the repairs have been done. The damage costs above are estimates based on quotes. The Landlord continued to say she was not sure if they should do the repairs prior to the hearing or not. The Landlord said carpet was repaired, the sliding mirror door was fixed and the shelves were repaired. The Landlord said she did not send in any paid receipts in the evidence package for the repairs.

The Tenant said the condition inspection reports do not comply with the Act and regulations therefore the reports are not valid and the Landlord has no claim against his deposits. The Tenant continued to say the Landlord's name is not on the report, the Landlord's address is not on the report, there is no place for the Tenant to disagree with the report, the Tenant did not sign the move out report and the report was altered after the inspection was done. The Tenant said the Landlord's report does not comply with section 23, 24, 35 and 36 of the Act; therefore the Landlord's claims against the deposits are extinguished.

The Tenant continued to say that the Landlord did return \$1,204.00 of his deposits after he filed his application. Therefore the Tenant said he is amending his application to recover \$1,296.00 of his deposits and the filing fee of \$100.00.

The Landlord said in closing that they have used this report over the years and they do not believe that because it does not meet all the requirements of the Act it should invalidate their claims. The Tenant did damage to the rental unit beyond normal wear and tear and they should be able to retain some of the Tenant's deposits to cover their costs. The Landlord said they will do the work after the hearing as the new tenants have requested the damages to be repaired.

The Tenant said in closing the Landlord did not meet the requirements in the condition reports to validate their claim against his deposits. The Tenant said there are four or more deficiencies on the report including; there is no place to disagree with the report, the Landlord's name and address is not on the report and the report has been altered after the inspection was completed. The Tenant said the condition inspection reports are not valid and the Landlord's claims against his deposits are extinguished.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did complete a move in condition inspection report which in the most part complies with the Act and regulations as the name on the report is the Landlord's agent. With regard to the move out condition inspection report I accept the Tenant's testimony and evidence that the report does not comply with the Act or regulations. Specifically there is no place for the Tenant to disagree with the report and therefore no place for the Tenant to sign if they do disagree. Further the neither the Landlord nor the Tenant signed the move out condition inspection report and the report was altered by the Landlord after the inspection was done. The Landlord testified she changes the report to add additional damage that was not seen at the walk through. Consequently, I find that the Landlord's condition inspection reports do not comply with the Act and regulations and therefore the Landlord's claim against the Tenant's security and pet deposits are extinguished.

Further for a Landlord to be successful in a damage claim a Landlord must establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

The Landlord claims there is damage during the tenancy but there is not actual loss proven because the repair work has not been done nor have paid receipts been submitted to establish the amount of actual loss. The Landlord has not provided any verification of the amounts to rectify the loss or damage; therefore the Landlord has not established grounds to prove her claim. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to prove a loss or to verify the amount of that loss or damage. I dismiss the Landlord's application without leave to reapply.

With respect to the Tenant's application for his security and pet deposits in the amount of \$2,500.00; I find that as the Landlord's claims against the deposits were extinguished and unsuccessful therefore the Tenant has established grounds for the return of his deposits.

As the Tenants have been successful in this matter I order the Tenants to recover the \$100.00 filing fee for this proceeding from the Landlord.

As the Landlord has not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issues to the Tenant for the following:

Security and pet deposits	\$ 2,500.00
Filing fee	\$ 100.00
Total	\$ 2,600.00
Less amount returned	<u>\$1,204.00</u>
Amount owing	<u>\$1,396.00</u>

Conclusion

A monetary order has been issued to the Tenant for \$1,396.00.

The Landlord's application is dismissed without leave to reapply.

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 13, 2016

Residential Tenancy Branch