



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND 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 April 25, 2014. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$650.00 and a pet deposit of \$650.00.

The tenancy ended on November 29, 2015. The parties dispute what took place on that date, particularly whether the tenant or the landlord failed to comply with the requirement to complete a move-out inspection.

Landlord's Evidence

The landlord stated that on November 29, 2015 she attended at the rental unit to do the move-out inspection, but the unit was not clean. The landlord stated that she had her copy of the move-in condition inspection report, but the tenant said that she did not have her copy and was not going to sign the landlord's copy. The landlord stated that she and her sister then went to a restaurant for a long lunch to give the tenant more time to clean. The landlord provided the restaurant receipt to establish this fact.

The landlord stated that she received a message from the tenant and returned to the rental unit later that day to complete the inspection. The landlord stated that when she returned to the unit, the tenant was leaving. The landlord stated that the tenant returned her keys and told the landlord "I'm done."

The landlord stated that after the tenant left, she inspected the unit and found that the unit was not clean, some items were broken and the tenant's dog had stained the carpet. The landlord stated that she did her best to mitigate her costs to do cleaning and repairs.

The landlord claimed monetary compensation totalling \$3,471.00. This amount includes costs for labour and materials to clean and repair the unit; the landlord's transportation and meal costs while cleaning and repairing the unit; pool key replacement; and costs associated with the dispute resolution process, including recovery of the filing fee and estimated costs for amending the application and mailing documents. The landlord supported her claim with receipts and photographs of dirty and damages items in the rental unit, as well as a breakdown of her labour and a detailed list of each item in each room that required cleaning or repair. The landlord also submitted a copy of the move-in condition inspection report.

Tenant's Evidence

The tenant stated that to her knowledge the move-out inspection took place at 2:00 p.m. on November 29, 2015. The tenant stated that at that time she and the landlord walked through the unit, and she gave the landlord the keys. The tenant stated that she stayed behind to clean some items at the landlord's request, and then she called the landlord to confirm that the landlord had found no damage during the walkthrough or when she returned, and she would be returning the security and pet deposits. The tenant stated that the landlord did not give the tenant a copy of the condition inspection report or serve the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection.

In regard to the landlord's claim, the tenant submitted as follows: all of the alleged damage was normal wear and tear; the landlord's photographs are undated; the landlord has failed to provide the age of items that were repaired or replaced; and the landlord's bill of itemized costs does not provide proof of repairing or cleaning the property. The tenant acknowledged that she lost the pool key, but pointed out that the landlord failed to provide a receipt to show the actual cost of replacing the pool key. The tenant submitted that the landlord's evidence was contradictory, as in one email she referred to the earlier inspection as a "quick look," and later she referred to it as the first of two inspections.

In regard to the tenant's claim, she submitted that the landlord failed in her responsibility to give the tenant a copy of a condition inspection report serve the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection, and therefore extinguished her right to claim against the deposits for damage to the rental unit. The tenant submitted that she is therefore entitled to double recovery of the security and pet deposits, in the amount of \$2,600.00.

Analysis

Landlord's Claim

Several items that the landlord has claimed are considered merely the cost of doing business as a landlord and are therefore not recoverable against the tenant. The portions of the landlord's claim regarding costs for travel, meals or time spent travelling are therefore dismissed. Aside from the filing fee, which I address separately, below, parties are not entitled to recover costs associated with the dispute resolution process. Therefore, the landlord's claims for mailing costs and time spent applying for and amending her application are also dismissed.

I accept the landlord's evidence that the tenant left the rental unit dirty and damaged. The tenant only pointed out that the landlord's photos were not dated; she did not dispute the condition of the unit that is depicted in the photos. The tenant did not dispute the validity of the move-in condition inspection report, which shows the condition of the rental unit at the outset of the tenancy. The landlord did provide a detailed list of what was cleaned or repaired in each room, and she provided receipts for items purchased. However, the landlord did not provide the age of items that were replaced, and therefore depreciation of those items therefore cannot be calculated. For example, if carpeting was stained and needed to be replaced but the carpet is 10 years old or older, then it has outlived its useful life and the landlord cannot claim the cost of materials or labour to replace the carpet. The average useful life of building components is set out in Residential Tenancy Policy Guideline #40.

As the landlord did not calculate depreciation of the items repaired, and she did not clearly indicate how much time she spent cleaning as opposed to repairing, I find it reasonable to grant the landlord a nominal award of \$500.00 for materials and \$250.00 for labour. The remainder of the landlord's application is dismissed.

Tenant's Claim

It is the responsibility of the person making a claim to provide sufficient evidence to support their claim. In this case the tenant claimed double recovery of the pet and security deposits, on the ground that the landlord failed to provide the tenant with a copy of a condition inspection report or serve the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection before doing a second inspection on her own.

I find the tenant has failed to provide sufficient evidence to support her claim, as it was ultimately not clear whether the landlord extinguished her right to claim against the security and pet deposits. If the tenant and the landlord did a move-out inspection as the tenant claimed, the landlord was under no obligation to make further attempts to schedule a move-out inspection with the tenant. The tenant did not deny that she refused to sign the landlord's copy of the condition inspection report. I am not satisfied that the landlord breached the Act in either way

alleged by the tenant. I therefore dismiss the tenant's claim for double recovery of the security and pet deposits.

Filing Fees

As the landlord's application was partially successful, she is entitled to recovery of the \$50.00 filing fee for the cost of her application.

As the tenant's application was not successful, she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to \$800.00. I order the landlord to retain this amount from the security and pet deposits in full satisfaction of this amount, and I grant the tenant an order under section 67 for the balance due of \$500.00. 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: August 10, 2016

Residential Tenancy Branch