



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on July 15, 2016 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 15, 2016 for:

1. A Monetary Order for damage to the unit - Section 67; and
2. An Order to retain the security deposit - Section 38.

The Tenant and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit and recovery of the filing fee?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on January 1, 2016 on a fixed term to end December 31, 2016. The Tenants moved into the unit on December 16, 2015. The Tenants gave 30 days' notice and the tenancy ended on June 30, 2016. Rent of \$1,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,700.00 as security deposit. No move-in or move-out inspection of the unit was conducted. About a week after the end of the tenancy the Tenants received \$850.00 of the security deposit from the Landlord.

The Landlord states that the Tenant failed to leave the unit clean and undamaged and claims as follows:

- \$250.00 for the cost of cleaning the unit. The Landlord states that no cleaning at all was done to the unit. The Landlord provided photos of the inside of the fridge and the inside of some cupboards; and
- \$820.00 for the cost of cleaning a shed, removing garbage, cleaning the yard, removing wood pieces, removing screws from a fence, patching walls, and cleaning gutters. The invoice does not provide any hourly details for each task and does not provide an hourly amount being charged. The Landlord states that the invoice should not have included the gutters and estimates that the gutter portion would be \$100.00. The Landlord has no idea what the hourly charge was as their contractor only gave them global amounts for charges.

The Tenant states that they left the unit clean and that the unit was kept in an immaculate condition during the tenancy. The Tenant states that at the end of the tenancy the Landlord failed to show up for the inspection and that when the Tenants returned to the unit later that day the Landlord was present and informed the Tenants that “everything was good”. The Tenant states that the Landlord was told at the time that if the cleaning was not sufficient the Tenants would clean further. The Tenant describes the cleaning done to the unit. The Tenant agrees that the inside of the fridge was missed. The Tenant states that all garbage was removed and does not recognize the garbage shown in one of the Landlord’s photos. The Tenant states that they did leave some nails in the fence and some wood pieces and tarps in the yard. The Tenant states that the removal of those items would not have taken more than a half hour. The Tenant states that the walls of the unit had pre-existing damage. The Tenant states that the unit was sold within 2 weeks after the listing date due to the good state the unit was left in by the Tenants.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Given the photos I accept that some minor cleaning to the inside of the unit was missed by the Tenants given the Tenant’s undisputed evidence that the Landlord told the Tenants on move-

out that the unit was left in good condition I find that the Tenant has substantiated that the unit was left reasonably clean. I therefore dismiss the costs claimed for cleaning.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given that there is no evidence of the hourly rate or the hours spent on any of the repair tasks it is not possible to determine whether the Landlord incurred reasonable costs for any of the items listed as being repaired. The costs claimed include an unknown amount for the gutters that is not the responsibility of the Tenant. The claim for repairs included repairs to walls and there is no condition report of the state of the unit at move-in leaving only the Tenant's evidence of the walls having pre-existing damage.

Although the Tenant did agree that some items were left such as nails, wood pieces and tarps, given that the Landlord found no problems with the unit at the time of move-out and accepting the Tenant's evidence that they did offer to remedy any shortfalls, I find that the Landlord both failed to substantiate the costs claimed and failed to take reasonable steps to mitigate the costs claimed. I dismiss the Landlord's claims and in effect the application is dismissed in its entirety.

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. As no move-in inspection was conducted I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit for damage to the unit was extinguished, the Landlord was required to return the full security deposit to the Tenant. The Landlord remained at liberty to make an application to claim damages however the Landlord could not retain the security deposit against that claim pending the outcome.

As the Landlord received the forwarding address prior to the end of the tenancy the Landlord had 15 days from the end of the tenancy to return the security deposit. As the Landlord failed to return the full security deposit I find that the Landlord must now repay the Tenant double the original security deposit plus zero interest of **\$3,400.00** less the amount already returned of **\$850.00** leaving the Tenant entitled to **\$2,550.00**. As the Tenant's application has been successful the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,650.00**. As the Tenants only named Landlord DY in their application I make the monetary order in this Party's name only.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,650.00**. If necessary, 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: February 17, 2017

Residential Tenancy Branch