



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order to retain the security deposit and recovery of the filing fee. 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 affirmed 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 retain the security deposit?

Is the landlord entitled to monetary compensation for damage or loss?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on January 1, 2011. At the beginning of the tenancy, the tenant paid the landlord a security deposit of \$2,450.00. The landlord's agent did a move-in inspection with the tenant but did not complete a condition inspection report.

The tenancy ended on June 2, 2016. The landlord and the tenant did not do a move-out inspection.

Landlord's Claim

The landlord has claimed the amount of the security deposit to cover the costs of cleaning and repairs. The landlord stated that the tenant left the rental unit in a terrible state at the end of the tenancy. The landlord stated that the rental unit was very dirty and damaged in several areas.

In support of their claim, the landlord submitted photographs of the condition of the rental unit at the beginning and end of the tenancy. The photographs taken at the end of the tenancy show broken windows, damaged walls, debris and garbage left throughout the rental unit, badly stained carpets, walls painted in dark blue and other extensive damage throughout the unit. The landlord also submitted a move-out condition inspection report in which they detailed all of the damage. The damage described in the report matches the damage shown in the photographs.

The landlord did not complete a monetary order worksheet or other specific breakdown of their claim. However, they submitted invoices as follows: \$4,451.96 for 53 hours of labour and materials to paint and repair walls, replace a shower door, and repair or replace numerous other items; \$8,228.30 for carpeting; and \$304.50 for 13 hours of labour and materials for cleaning. The work described on the invoices matches the damage detailed in the condition inspection report and shown in the landlord's photographs.

The landlord did not provide the age of items that needed to be repaired or replaced.

Tenant's Response

The tenant submitted that because the landlord did not do a move-in condition inspection report, they extinguished their right to claim against the security deposit.

The tenant stated that they did cleaning for a couple of days before they vacated. The tenant acknowledged that a family member who has mental health issues did some damage in the unit, but that damage was immediately repaired.

Analysis

Under section 38 of the Act, if a landlord fails to complete a condition inspection report as required under section 24 of the Act, the landlord's right to claim against the deposit for damage to the rental unit is extinguished. If a landlord's right to claim against the security deposit for damage to the rental unit is extinguished and there is no claim for other loss such as unpaid rent, the landlord must return the security deposit.

In this case, the landlord did not complete a move-in condition inspection report as required under section 24 of the Act, and their right to claim against the deposit for damage to the unit was extinguished. The fact that the tenant did not participate in a move-out inspection is not relevant in this case, as the landlord extinguished first. The landlord did not return the security deposit, and therefore the landlord must pay the tenant double the amount of the security deposit.

I accept the landlord's evidence as consistent and credible in showing the extensive damage and dirty condition in which the tenant left the rental unit at the end of the tenancy. The details of

the damage in the condition inspection report and the landlord's application correspond with the damage depicted in the photographs and the repairs described on the invoices.

However, the landlord did not provide the age of any of the repaired or replaced items, and therefore depreciation could not be calculated. Even if some of the items were new at the beginning of the tenancy, they would have been more than five years old at the end of the tenancy. For example, the average useful life of carpets, as set out in Residential Policy Guideline 40, is 10 years. Therefore, five-year-old carpets would have depreciated by 50 percent, and the landlord would only be entitled to half of the value of the carpets.

I find that in this case depreciation does not apply to at least some of the work done to repair and replace items after the tenancy, such as applying four coats of paint to cover the dark blue paint. I further accept that, given the extent of the damage, the landlord is entitled to the amount claimed of \$2,450.00

As the landlord's claim was partly successful, they are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant is entitled to double recovery of the security deposit, in the amount of \$4,900.00. The landlord is entitled to \$2,550.00. I grant the tenant an order under section 67 for the balance due of \$2,350.00. 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: February 2, 2017

Residential Tenancy Branch