



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repairs, cleaning, preparing digital evidence and for the filing fee. The landlord also applied to retain the security and pet deposits in satisfaction of his claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Has the landlord established a claim against the security and pet deposits and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 21, 2016 and ended on September 01, 2017. The monthly rent was \$1,785.00. Prior to moving in, the tenant paid a security deposit of \$862.00 and a pet deposit of \$431.00. Both parties agreed that the deposits are currently being held by the landlord.

A copy of the move in and move out condition inspection report was filed into evidence. The rental unit was brand new at the start of tenancy. A move out inspection was conducted on September 01, 2017 by the landlord in the presence of the tenant and her witness. Both parties filed a copy of the move out condition inspection report dated September 01, 2017. The tenant provided the landlord with a forwarding address on that same date. The landlord made an application to retain the deposits on September 04, 2017 which is within the legislated time frame of 15 days.

The copies of the move out inspection report filed by both parties are not identical. The tenant filed a photograph of the report, taken on September 01, 2017. The report is filled out and the landlord has check marked the box that states that he agreed that the report fairly represented the condition of the rental unit, at the end of tenancy.

The landlord's copy of the report shows that the checked box is crossed out and the other box is checked which states that he did not agree that the report fairly represented the condition of the rental unit at the time the tenant moved out. The landlord stated that the amendment was done in the presence of the tenant which was denied by the tenant.

The report indicates that certain areas were left in a dirty condition. The parties stated that they discussed the condition of the unit and the landlord agreed that he wrote the following on the report in the presence of the tenant:

"Will return \$1043.00 to tenant for the deposit. Only outstanding is complaint to strata noise that we will both address"

The copy of the tenant's condition report also shows the above written comment made by the landlord. The tenant stated that she agreed to cover the cost of cleaning and a fob replacement and authorized the landlord to retain \$250.00 from the deposits and return the balance of \$1,043.00 to her.

The landlord pointed out that he did not sign this report at the time of the move out inspection. On September 04, 2017, the landlord used the services of a professional restoration company and was presented with an estimate to repair the unit in preparation for renting it to the next tenant. The landlord stated that the carpet was damaged and needed to be replaced, the unit needed to be painted and cleaned and the landlord was claiming the cost of doing so.

The landlord also claimed the cost of replacing the fob, the cost of providing digital evidence to support his application and the recovery of the filing fee. The landlord testified that the noise complaints to the strata were resolved and he withdrew his monetary claim as the strata did not levy any fines.

Analysis

Based on the documents filed into evidence and the testimony of both parties, I find that the parties participated in a move out inspection and came to an agreement regarding the amount that the landlord was permitted to retain from the deposits.

The fines levied by the strata would be determined at a later date but were eventually dropped. Even though the landlord did not sign the report, he agreed that he had written the comment regarding the return of \$1,043.00 to the tenant.

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for.

After the move out inspection, the landlord stated that additional damage was identified and is claiming the cost of repair. As stated above, the move out inspection is the only opportunity to identify damage by the tenant and therefore I dismiss the landlord's claim for additional costs for repairs, carpet replacement and cleaning.

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the landlord's claim for the cost of filing digital evidence and mailing is dismissed. Since the landlord has not been successful in proving his claim, he must bear the cost of filing this application.

As agreed to by both parties and documented on the move out inspection report, the landlord may retain \$250.00 towards the cost of cleaning and fob replacement. I order that the landlord return the balance of \$1,043.00 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,043.00**.

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: March 16, 2018

Residential Tenancy Branch