



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain all or a portion of the security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 29, 2019. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Is the Landlord entitled to retain all or a portion of the security and pet deposits?

Background and Evidence

This tenancy started on September 1, 2017 as a month to month tenancy. Rent was \$2,000.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 and a pet deposit of \$500.00 at the start of the tenancy. The Tenant said the tenancy ended on February 28, 2019. The Tenant said a move in condition inspection report was completed at the start of the tenancy, but only a walk through was done at the end of the tenancy. The Landlord said she completed the move out condition inspection report on March 8, 2019 without the Tenant being present. Further, the Landlord said the Tenant would not sign the move out condition inspection report as the Tenant disagreed with the contents of the report. The Tenant confirmed that she did not sign the report as it was not done on the day they did the walk through and she does not agree with it.

The Landlord said the Tenant moved out of the rental unit and left the unit in an unclean and damaged state. The Landlord said she hired two cleaners for two days at a cost of \$640.00 to clean the unit. The Landlord said this was the cost that she incurred, but she did not submit the cleaning invoice or paid receipt. Further the Landlord said she hired a painter to repair the walls and paint the unit. The Landlord said she submitted the receipt for the paint in the amount of \$95.00 but not the hired labour for the amount of \$400.00. The Landlord continued to say in addition to the hired labour she worked at the rental unit cleaning the house and yard for 36 hours over three days. The Landlord said she has submitted the condition inspection reports and photographic evidence to show the damage and cleaning. The Landlord requested that she retain \$1,135.00 of the Tenant's security and pet deposits.

The Landlord said that she has provided the move in condition inspection report dated August 31, 2017 and the move out condition inspection report with a move out date as February 28 and a report date of March 8, 2019. The Landlord said the rental unit was left in very poor condition both in the unit and outside in the yard. The move in condition report indicates the unit was in good condition at the start of the tenancy. The move out condition report and the photographs show the unit to be in a poor state of cleanliness and repair at the end of the tenancy.

The Tenant said the unit was cleaned before she left the rental unit. The Tenant said she hired professional cleaners to clean the unit before she moved out. The cleaners shampooed the carpets and clean the inside of the rental unit. The Tenant said she did not submit the invoice for the cleaners for the hearing.

Further the Tenant said that most of the damage inside the unit and to the walls was there at the start of the tenancy. The Tenant said she didn't know that she had to indicate any damage on the move in conditions inspection report. The Tenant said any damage to the unit was normal wear and tear and she does not believe she owes the Landlord anything for cleaning or damage to the rental unit.

The Tenant continued to say she agreed to a \$100.00 deduction from her security deposit for cleaning the yard and removing some garbage that she left in the yard for pick up. The Tenant said that is all she will agree too.

The parties were given the opportunity to make a settlement agreement but the parties were unsuccessful in making an agreement so the Arbitrator said he would write a decision.

The Landlord said in closing that the photographic evidence submitted proves that the Tenant did not clean the unit and that she damaged the rental unit.

The Tenant said in closing the Landlord has not provide evidence to prove her claims.

Analysis

Condition inspection: end of tenancy

Section 35 of the Act says: (1) the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) On or after the day the tenant ceases to occupy the rental unit, or

(b) On another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

Section 36 of the Act says: (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Given that the Landlord completed the move out condition inspection report without the Tenant present and the Tenant did not sign the report, I find the Landlord did not comply with section 35 and 36 of the Act. Consequently, I find the Landlord's claim against the Tenant's security and pet deposits are extinguished. The Landlord is ordered to return the Tenant's security and pet deposits within 15 days of receiving this decision.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord testified as to the expenses that she incurred in cleaning and repairing the rental unit, but the Landlord did not provide any evidence to prove the loss actually existed and it happened solely because of the actions of the Tenant. When proving a loss an applicant **must** prove their loss exists and they verified the losses by providing receipts for the claims that the Landlord is making. The Landlord testified that she hired cleaners for \$640.00 and a painter for \$400.00, but neither of these claims have invoices or paid receipts to prove the claim. I dismiss both claims for lack of evidence.

The Landlord did provide a receipt for paint in the amount of \$95.00. The Landlord said she had to paint the unit after the Tenant moved out and that she had painted the unit prior to the Tenant moving. The Tenant said the unit was not painted at the start of the tenancy. I have reviewed the move in condition inspection report and there is no reference to the unit being freshly paint. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Based on the balance of probabilities, I find there is no evidence to show the rental unit was freshly painted at the start of the tenancy. I accept the Tenants testimony that the painting of the unit was for normal wear and tear.

Consequently, I dismiss the Landlord's claim for the cost of paint in the amount of \$95.00.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the filing fee of \$100.00 that she has already paid.

Conclusion

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

The Landlord is order to return the Tenant's full security and pet deposits within 15 days of receiving this decision.

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: May 13, 2019

Residential Tenancy Branch