



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 the Tenants' security deposit 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 April 10, 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. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is the Landlord entitled to retain the Tenants security deposit?

Background and Evidence

This tenancy started on January 1, 2018 as a 1 year fixed term tenancy with an expiry date of December 31, 2018 and then was renewed under another fixed term to March 31, 2019. Rent was \$1,537.50 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$750.00 on December 29, 2017. This tenancy ended on March 31, 2019. The Tenants said a move in condition inspection report was completed and signed on December 29, 2017 and no condition inspection report was completed on move out. The Landlord said a walk through was done on March 31, 2019 and the Landlord sent an email to the Tenants on April 3, 2019 with a list of the damages. Further the Landlord said she gave the Tenants a post dated cheque for the

return of the security deposit on March 31, 2019 and then cancelled the cheque after finding the damages.

The Landlord said she did not complete a move in or move out condition inspection report, but he did submit photographs to show the damage the Tenant did.

The Landlord said her total damage claim is \$1,750.00. Her claim includes \$651.50 to replace a fridge door, \$273.89 to replace a stove drawer, \$155.72 to replace a micro wave door, \$150.00 for the installation of the doors, \$399.00 to paint the unit and \$120.00 for the Landlord's time. The Landlord said the Tenants did clean the unit well when they moved out and it is possible that the cleaning products they used damaged the surfaces of the appliances. The Landlord requested monetary compensation of \$1,750.00 plus the filing fee of \$100.00. .

The Tenants said the Landlord did a walk through on March 31, 2019 but did not do a proper move out condition inspection report. The Tenants continued to say after the walk through the Landlord said the unit was fine and the Landlord gave the Tenants a post dated cheque for the return of the security deposit. The Tenants said that they were not told of any damages until the email of April 3, 2019 which was 3 days after the end of the tenancy and without their inspection of the damages. The Tenants said the Landlord's claims are not justified because they did not do a proper move out condition inspection report. Further the Tenant said the move in condition inspection report shows damage to the fridge and stove. The Tenants continued to say that the appliances were greasy and dirty when they moved in and when they cleaned the appliances properly the damages show up. The Tenants said they did not damage the appliances.

Further the Tenants said the tenancy agreement has no information or instruction about hanging pictures and shelves so they used nails which did leave holes in the walls. The Tenant said they filled the holes and touched up the paint before they left the unit. As well the Tenant said painting is the responsibility of the Landlord not the Tenants and the tenancy was over 15 months long so there was normal wear and tear to the unit. The Tenants said the Landlord's claims are not justified and are not supported by a move out condition inspection; therefore the Landlord's application should be dismissed.

The Landlord said they verbally tried to schedule a move out condition inspection report on March 16, March 28 and March 31, 2019 but the first two dates did not work out and on March 31, 2019 they were going to a funeral so they did a walk through and did not do a written move out condition inspection report. The Landlord said she followed up with the email of April 3, 2019 outlining the damages to the Tenants. The Landlord said she believes the email of April 3, 2019 is part of the move out condition inspection.

The Tenants said in closing they tried to be good tenants and work with the Landlord and they were surprised that the Landlord is claiming damages. There was no move out report and no indication from the Landlord on March 31, 2019 the end of the

tenancy that the Landlord saw any damages. Further the Tenants said the cleaning products they used were specific for the surfaces on the appliances so no damage to the appliances could have resulted. The Tenants said they did not damage the rental unit and the Landlord's application should be dismissed.

The Landlord said in closing the Tenants cleaned the unit well and they believe the cleaning products they used may have damaged the appliances. Further the wall patching the Tenants did was poorly done and the Landlord said he wished they had not done it. The Landlord said there were damages to the unit that they did not see on the March 31, 2019 walk through but the Landlord itemized the damages in the April 3, 2019 email to the Tenants. The Landlord requested the full compensation for the damages from the Tenants.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must together do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

Condition inspection: end of tenancy

35 (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

36 (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.

As the Landlord did not do a move out condition inspection report with the Tenants she is unable to establish the condition of the rental unit at the end of the tenancy. I do not accept the Landlord's email of April 3, 2019 as part of the move out inspection as the Tenants were not able to view the damage and compare it to the move in condition inspection report. Consequently, I find that the Landlord has not established proof that the Tenants damaged the rental unit. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

As well, as the Landlord was not successful in this matter I dismiss her application to recover the filing fee of \$100.00 from the Tenants.

Further I order the Landlord to return the Tenants' full security deposit of \$750.00 within 15 days of receiving this decision.

Conclusion

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

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: July 09, 2019

Residential Tenancy Branch