



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TENANT: MNSD, FF
 LANDLORD: MND, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on November 29, 2019, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on September 7, 2019, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain the Tenant's deposit?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on August 1, 2017 as a one year fixed term tenancy and then renewed on a month to month basis. Rent was \$1,700.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$850.00 and although a pet deposit of \$250.00 was indicated in the tenancy agreement the parties agreed the pet deposit was not paid. As well the parties agreed no condition inspection reports were completed and signed by the Landlord and Tenant. The tenancy ended on July 31, 2019.

The Tenant said he gave the Landlord written notice to end the tenancy on June 26, 2019 along with her forwarding address in writing. The Landlord said the Notice was accepted and a new tenant moved into the rental unit on August 1, 2019. Tenant said she did a walk through with the Landlord's agent and the agent did not mention any deficiencies in the condition of the unit. The Tenant said she hired professional cleaners and a professional carpet cleaner to clean the rental unit. The Tenant said she expected to receive her deposit of \$850.00 to be returned within the 15 days after the tenancy ended. The Tenant continued to say the Landlord did not return the deposit so she applied for double the deposit as stated in the Act. The Tenant said she is requesting double her security deposit of \$850.00 in the amount of \$1,700.00 and to recover the filing fee of \$100.00 for a total of \$1,800.00.

The Landlord said the second Tenant in the rental unit committed suicide in the unit and was not found for 8 or 9 days. The death certificate shows the date of death as June 29, 2019 and the deceased was found on July 7, 2019. Consequently the Landlord said she felt the carpet where the deceased laid was damaged and had to be replaced. The Landlord replaced the carpet at a cost of \$1,623.00. The receipt for the carpet and the installation are submitted into evidence.

The Tenant said when she did the walk through with the Landlord's agent, after the death of the second tenant, the Landlord's agent did not mention anything about the carpet and said the condition of the unit was acceptable. The Tenant said there was no mention that her security deposit would not be returned.

The Landlord said it was her mistake that no condition inspection reports were completed, but she is a new landlord and she didn't know all her responsibilities. The Landlord continued to say that it is only reasonable to replace the carpets after what had happened. She believed the Tenant would understand the carpet had to be replaced and the Tenant's security deposit would pay for part of it.

The Landlord was asked by the Arbitrator if she had any evidence that proves the carpets had to be replaced. The Landlord said she submitted the carpet receipt but it does not have the reason for replacing the carpets. The Landlord agreed she did not have any corroborative evidence to prove the carpets needed replacement and her agent was not available to testify at the hearing.

The Tenant said that during the move out walk through the carpets had been professionally cleaned and looked fine. The Tenant said the Landlord's agent did not mention an issue with the carpets.

The Landlord said in closing that she tried to work with the Tenant to resolve this dispute, but the Tenant stopped communicating with her. The Landlord said she is disappointed with the Tenant and the process.

The Tenant said in closing she cleaned the rental unit and expected her deposit to be returned and now that the Landlord has not returned it she is requesting double her deposit.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenant's security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenant's security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out 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. In this situation I find the damage to the carpet is not proven. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim.

These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

The Landlord has not provided any corroborative evidence to prove the carpet was damaged which is the first requirement of proving a loss. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the Tenants' application for double their security deposit in the amount of \$1,700.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony and written evidence that she did give the Landlord a forwarding address in writing on June 26, 2019. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by August 11, 2019. Consequently I find for the Tenant and grant an order for double the security deposit of \$850.00 in the amount of \$1,700.00.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlord to bear the \$100.00 filing fee for her application, which she has already paid.

A monetary order has been issued to the Tenant for the following:

Double Security deposit	\$ 1,700.00	
Filing fee	\$ 100.00	
Total		\$ 1,800.00

Conclusion

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

A monetary order has been issued to the Tenant for \$1,800.00.

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: January 07, 2020

Residential Tenancy Branch