



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNSD, FFL, FFT

Introduction

In the first application the landlord seeks a monetary award for cleaning, furniture moving, loss of a variety of household items and for a fine incurred by the tenants' alleged mis-categorization of garbage.

In the second application the tenants seek to recover a \$950.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "RTA").

Both seek recovery of their filing fee.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenants fail to leave the premises reasonably clean? In the circumstances of this case were they obliged to return furniture in this furnished accommodation to any particular spot in the home? Did the tenants fail to return any household items? Did they cause the landlord to incur a local government fine for improper garbage?

Are the tenants entitled to the doubling of the security deposit?

Background and Evidence

The rental unit is two-bedroom “laneway” home located on the residential property behind the landlord’s house. The tenancy started in October 2016 and ended with the tenants giving notice and vacating on December 15, 2019. At the end of the tenancy the monthly rent was \$2000.00. The landlord holds the tenants’ \$950.00 security deposit.

It is agreed that the tenants provided the landlord with their forwarding address in writing on January 6, 2020. The landlord’s application was made July 20, 2020.

The rental unit came furnished. All agree some of the furniture was heavy, particularly two door cabinets. The tenants had their own furniture and so stored most of the landlord’s furniture in a crawlspace. At the end of the tenancy the landlord’s partner S, who was the main communicant with the tenants during this tenancy, requested that they put the furniture “back in place etc so that I can inspect and send in cleaner . . .” The tenants put the furniture back in the places they recalled from the start of the tenancy almost three years earlier. After they left, the landlord determined the furniture was not in the same place as at move-in. S had to hire a handyman to move the furniture.

The landlord did not conduct the move-out inspection or prepare the report required by s. 35 of the *RTA*. It appears there was some discussion of an inspection date but the landlord had to cancel and another date was never confirmed.

The tenants say they would have been happy to move items of furniture around had they been asked and would even have returned after the end of the tenancy in order to do so.

The landlord testified that a number of household items and bedding provided at the start of the tenancy went missing at the end. The tenant AL testified that they did not take anything with them at the end of the tenancy and that they never saw some of the items claimed.

At some point in time after the tenants left December 15, but prior to January 10 2020, the landlord apparently received a find for putting sporting equipment in a green garbage bin. S thought the tenants did it. The tenants deny it saying they know how to separate garbage and have done so properly for their entire tenancy. They note that

the garbage is in a laneway accessible to the public, implying that it could have been a passerby who put something in the green bin.

Analysis

The landlord has put himself in a difficult position by failing to schedule and conduct a move-out inspection and prepare a report. The inspection and reporting requirements of the *RTA* are meant to avoid just such a dispute as this one. Additionally, the inspection is an opportunity for the parties to agree or disagree on what is or is not acceptable and, practically speaking, to afford a tenant a brief opportunity to remedy wrongs. Equally, the inspection affords a tenant the opportunity to collect evidence such as photos of complained of areas or items. That opportunity ends once a tenant hands back the keys. Then the tenant has no right or power to return in order to capture evidence of the state of the premises after learning of a landlord's complaint.

Furniture Return

I dismiss this item of the claim. The landlord insisted the tenants return the furniture as it was in the advertisement the tenants responded to back in 2016. The tenants deny there were any pictures in that ad and the ad is no longer retrievable. The landlord did not provide the ad to the tenants at the time nor any direction about what went where. It was unreasonable of the landlord to expect an exact relocation of furnishings in these circumstances.

In any event, I find that the dispute about the location of furniture would not have arisen had the landlord conducted the required move-out inspection with the tenants. The furniture would have been moved to wherever in the room the landlord wished.

Cleaning

There is no evidence that the rental unit was other than "reasonably clean" when the tenants left. Indeed, the landlord's partner S anticipated hiring cleaner even before the tenants left regardless of the state of the rental unit. I dismiss this item of the claim.

Items Taken

There is no move-in inspection and report, which, in the case of a furnished rental unit, should normally list items included with tenancy, like dishes or bedding. The landlord

produces a copy of an order form from a department store listing household items said to be destined for this rental unit but in the face of the tenants' sworn denial of the existence of most of those items in the rental unit and their sworn assertion they did not take any of the landlord's belongings, I find that the landlord has failed to prove this item of the claim on a balance of probabilities.

Garbage Fine

There is no direct evidence of the tenants binning sporting goods in the wrong container. The landlord has not provided a copy of the fine said to have been incurred nor indicated the date of the fine to tie it in with these tenants and the date they vacated. Again, in the face of the tenants' sworn denial, I find the landlord has failed to prove this item of the claim on a balance of probabilities.

Security Deposit and Doubling

Section 38 of the *RTA* provides that once a tenancy has ended and once a tenant has provided a forwarding address in writing to the landlord, the landlord then has fifteen days to either a) repay the deposit money, or b) make an application for dispute resolution to keep all part of it.

This obligation does not apply where a tenant has given written authorization for a landlord to keep the deposit money, but that is not the case here.

Section 38 further provides that a landlord who fails to do either a) or b) within the fifteen day period must account to the tenant for double the deposit.

That is the case here. The forwarding address was provided January 6 and though the landlord did make an application against the deposit money, it was well outside the fifteen day period.

As a result, the tenants are entitled to recover their full \$950.00 deposit, doubled to \$1900.00 plus recovery of the \$100.00 filing fee for their application.

Conclusion

The landlord's application is dismissed.

The tenants' application is allowed. They will have a monetary order against the landlord in the amount of \$2000.00

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: October 08, 2020

Residential Tenancy Branch