



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for cleaning costs of the residential property, to retain a portion of the security deposit in full satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for to recover cleaning costs?

Is the landlord entitled to retain a portion of the security deposit in full satisfaction of the claim?

Background and Evidence

The tenancy agreement filed in evidence states that the tenancy began on September 1, 2019, under a fixed term ending on September 1, 2020. Rent in the amount of

\$1,000.00 was payable on the first of each month. The tenant paid a security deposit of \$500.00. The tenancy ended on or about August 31, 2020.

In this case, the landlord is claiming 11.5 hours for cleaning. In the landlord written submission they stated they are claim this amount for cleaning rat feces, appliances not thoroughly cleaned, mold on windows frames and that the entire house required a deep cleaning and sanitization by a profession cleaner before they could move back into the property due to their children having asthmas and allergies.

The landlord testified that the tenant was previously warned about leaving garbage in the garage as it was attracting rats. The landlord stated that the tenant cleaned up the garbage; however, they failed to clean the rat feces up.

The landlord testified that they found a dead rat in a trap and this should have been disposed of by the tenant.

The landlord testified that the tenant did not pull out the appliances and they had to clean the dirt from behind those appliances. The landlord stated that four windows had mould and that under the ring for the stove elements were dirty. Filed in evidence are photographs.

The tenant testified that the landlord did not do a move-in condition inspection report at the start of the tenancy. The tenant stated that the landlord had extinguished their right to retain the security deposit and it should have been returned at the end of the tenancy.

The tenant testified that there was an issue with rats prior to them moving onto the property and this is not uncommon when you live in a rural area. The tenant stated that the photograph the landlord has provided in evidence of the garbage was taken in July 2020, and not at the end of the tenancy. The tenant stated they did not see any rat feces after they had cleaned the premise.

The tenant testified that the dead rat is from one of the landlord's traps. The tenant stated that they never knew it was even there.

The tenant testified that they admit they did not pull out one of the appliances as they were unable too. The tenant stated that they cleaned the stove and under the element rings; however, the stove was old, and they could not remove some of the debris. The tenant stated that the photograph shows that stove was cleaned, except for the problem area under the element rings.

The tenant stated that the photographs the landlord has provided are of two windows and there are 28 windows in the rental unit. The tenant stated that they cleaned the windows and sills the best they could; however, they are old single pane windows. The tenant stated that they missed some dust by the wood stove and left some cereal in the cupboard.

The tenant testified that the photographs the landlord has provided are multiple photographs of the same things and are not a fair representative of how they left the unit. The tenant stated they left the property reasonably clean as required.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord(has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 23 of the Act states **that** the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 24(2) of the Act states that the right of a 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 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, the landlord did not inspect the rental unit with the tenant at the start of the tenancy. I find the landlord has failed to comply with section 23 of the Act. While the landlord is not entitled to claim against the security deposit for damage to the residential property; however, that is not the claim before me.

The claim before is cleaning costs and whether the tenant left the rental unit reasonably clean in accordance with section 37 of the Act. The landlord's application was filed for dispute resolution within 15 days of the tenancy ending. Therefore, I find the landlord was entitled to retain the security deposit until the issue of the cleaning cost was heard.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, I am not satisfied that the landlord has proven the tenant did not leave the rental unit reasonably clean. The Act does not require the tenant to leave the rental unit to a higher standard, such in this case the landlord paid to have a deep cleaning of the premise for the benefit of the landlord's children. While I accept it was reasonable for the landlord to do; however, that was their personal choice and not the responsibility of the tenant.

The landlord has provided photographs, they do not show that the premise was left unreasonably clean. While I accept there were minor deficiencies, this does not justify 11.5 hours of cleaning. Therefore, I dismiss the landlord's claim for cleaning costs.

As I have dismissed the landlord's application, I find the landlord is not entitled to recover the cost of the filing fee. As the landlord no longer has the authority under the Act to retain the security deposit, I order the landlord to return to the tenant their security deposit in the amount of **\$500.00**. I grant the tenant a formal order pursuant to section 67 of the Act, should the landlord fail to comply with my order.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order for the return of their security deposit.

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 06, 2021

Residential Tenancy Branch