



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND MNSD FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the rental unit, and an application by the tenant for recovery of the security deposit. The tenants, three witnesses for the tenants, and the landlord's agent all participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Are the tenants entitled to recovery of the security deposit?

Background and Evidence

The tenancy began on November 18, 2007. At the outset of the tenancy, the landlord received from the tenants a security deposit of \$412.50, and a pet deposit of \$200. The landlord and tenants conducted a joint move-in inspection on November 18, 2007. The landlord and one tenant signed the move-in inspection report, and the tenant acknowledged that the report accurately represented the condition of the rental unit at the time of the inspection. The only item not noted as "OK" was 5 kitchen drawers missing.

The tenancy ended on December 18, 2008. The landlord did not arrange for a joint move-out inspection with the tenants. On or about December 30, 2008 the tenants provided the landlord with a written forwarding address. On January 9, 2009 the landlord sent a cheque for \$200, representing the pet deposit, to the forwarding address the tenants provided. The cheque was returned to the landlord because the tenants

had not given their correct forwarding address. The tenants provided the landlord with the correct forwarding address over the telephone late in January 2009. The landlord decided to hold on to the pet deposit as well as the security deposit pending the outcome of this hearing.

The landlord inspected the rental unit after the tenants moved out and noted items requiring cleaning or repairs. The landlord has claimed monetary amounts against the tenants as follows:

1. \$5 to clean the ceiling fan in the kitchen
2. \$90 for cracked glass in the kitchen window
3. \$25 for holes in the kitchen walls
4. \$10 for cleaning kitchen cabinets
5. \$80 for a missing bi-fold closet door in the entranceway
6. \$100 for scratches on the living room floor
7. \$2 for cleaning in bedroom 1
8. \$90 for cracked glass in a window in bedroom 1
9. \$25 for chipped walls in bedroom 2
10. \$5 for cleaning the windows in bedroom 2
11. \$5 for cleaning the balcony

The landlord provided as supporting evidence photographs of the damages and a receipt for materials and labour to replace two windows.

The response of the tenants to the landlord's claim was as follows. The tenants acknowledged responsibility for the holes in the kitchen wall (item 3) and the scratches on the floor (item 6). The tenants and their witnesses stated that the two windows in question (items 2 and 8) were cracked at the beginning of the tenancy, and the closet door was always missing (item 5). The tenants stated that they did cleaning at the end of the tenancy and they therefore disputed all of the amounts claimed for cleaning (items 1, 4, 7, 10 and 11).

Analysis

In regard to the landlord's claim, I find that the landlord is entitled to \$25 for holes in the kitchen walls (item 3) and \$100 for the scratched floors (item 6), as the tenants acknowledged responsibility for those damages. Based on the landlord's photographs, I find the landlord is also entitled to \$25 for chipped walls in bedroom 2 (item 9), for a total of \$150.

The tenants signed the move-in inspection report, but the report does not include any reference at all to the condition of any windows. I accept the evidence of the tenants and their witnesses that the windows in question were cracked at the outset of the tenancy. I therefore dismiss those portions of the landlord's claim (items 2 and 8). The move-in inspection does reference the closet/door/frame in the entrance as "OK"; however, the landlord did not provide any receipt for the cost of replacing the closet door and I therefore dismiss that portion of the landlord's claim (item 5). The landlord did not arrange a move-out inspection with the tenants or provide any photographic evidence to support the claims for cleaning. I accept the evidence of the tenants regarding cleaning and dismiss the portions of the landlord's claim regarding cleaning (items 1, 4, 7, 10 and 11).

As the landlord's claim was partly successful, I find they are entitled to partial recovery of their filing fee, in the amount of \$20, for a total of \$170.

In regard to the tenants' application for recovery of their security deposit, I find as follows.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution to keep the security deposit. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on December 18, 2008. The tenants provided a written forwarding address to the landlord on or about December 30, 2008, and on January 9, 2009 the landlord attempted to return the \$200 pet deposit. In late January 2009 the tenants verbally provided their corrected forwarding address, but they did not do so in writing. The landlord then decided to retain both the pet deposit and the security deposit, and did not apply for dispute resolution to retain the deposits. On January 29, 2009 landlord sent a registered mail package to the tenants at the correct address.

The intention of Section 38 of the Residential Tenancy Act is to ensure that landlords do not improperly retain the security or pet deposits. In this case, the landlord did not apply to retain the deposits or return the deposits even after they had received the corrected address, and the tenants only inadvertently provided the landlord with an incorrect suite number on their written forwarding address. I therefore find that the landlord did not comply with the Act, and the tenants are entitled to their pet and security deposits of \$612.50, accrued interest of \$10.40, and double the base amount of the security deposit in the amount of \$612.50, for a total of \$1235.40. The tenants are also entitled to recover the \$50 filing fee for the cost of their application.

Conclusion

I deduct the landlord's award of \$170 from the tenants' award of \$1285.40 and I grant the tenants an order under section 67 for the balance due of \$1115.40. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 6, 2009.