



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF, SS

Introduction

Introduction

This matter dealt with an application by the Landlord to retain the Tenant's security deposit, service documents or evidence in a different way than required by the Act 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 August 18, 2010. 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 the Landlord and the Tenant's agent in attendance.

Issues(s) to be Decided

1. Are there rent or utilities arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Is there damage or loss to the Landlord and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on August 1, 2008 as a 6 month fixed term tenancy and then renewed 3 additional times with a 6 month fixed term. The final term expiry date was July 31, 2010. Rent started at \$800.00 per month and then was reduced to \$770.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 on July 31, 2008.

The Landlord said she has made a claim to retain a portion of the Tenant's security deposit to recover the costs she incurred to paid the Tenant's utility bill of \$117.19, to pay for the Landlord's time to clean the unit and to haul garbage away in the amount of \$206.00, to cut new keys for the unit for \$11.00 and to recover the filing fee for this proceeding of \$50.00. The Landlord said her total claim is \$384.19.

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The Landlord said she had her agent do the move in condition inspection report with the Tenant's agent on July 31, 2008. She said the Landlord's agent mistakenly did not get the Tenant's agent to sign the report. The Landlord said a copy of the report was sent to the Tenant. The Landlord submitted a letter from her agent dated November 25, 2010 in which she says she did not do the move in report with the Tenant but with her daughter (the Tenant's agent). The Landlord continued to say that the unit had just been renovated so it was in new condition and the Tenant was the first occupant after the renovations.

The Landlord continued to say that she gave the Tenant two opportunities (first in the 3rd week of June and July 12, 2010) to make an appointment to do the move out condition inspection report. She also said she followed up many times by phone, but the Tenant did not commit to a time to do the move out inspection report. The Landlord said she received a letter on August 6, 2010 that gave her the Tenant's forwarding address (the Tenant's agent's law office address) and the letter stated that the Tenant would not be participating in the move out condition inspection report.

The Tenant's agent said that no move in condition report was done. She said she went to the unit with the Landlord's agent only to view the unit and she understood the inspection report would be done later when she pick up the keys. The Tenant's agent continued to say that the Landlord's agent did not complete the move in condition inspection report with her, but told her to pick the keys up at the office. The Tenant says she could not local a move in condition inspection report in her records.

The Tenant's agent continued to say that it was her understanding that if a move in condition inspection report is not done then a move out condition inspection report is not required. She said that is why the Tenant did not participate in the move out condition inspection report.

The Tenant's agent said that she sent the Landlord the Tenant's forwarding address by registered mail on July 26, 2010.

The Tenant said that she left the unit reasonable clean and she had taken the garbage out to the street on July 20, 2010, which was the night before the normal garbage pickup. She continued to say that there may have been some items that the garbage collectors may not normally pick up like a vacuum cleaner.

The Tenant's agent said that they had no dispute with the Landlord's claim for the unpaid utility bill of \$117.19.

Analysis

Sections 23 Move in condition inspection report and section 35 Move out inspection condition inspection report say the reports must be done or the Tenant or the Landlord's right to the security deposit may be extinguished.

I find that both the Landlord and Tenant did not meet their obligations to do the condition inspection reports. The Tenant did not participate in the move out report although she was given two opportunities as required by the Act. The Landlord did not complete the move in report as stipulated in the Act. Section 23 (5) says both the landlord and the tenant must sign the condition inspection report. The move in report dated July 31, 2008 is only signed by the Landlord. Consequently I find that the violations in completing the condition inspection reports are offsetting and therefore; the condition inspection reports are not determinative of this dispute.

Section 26 says a tenant must pay rent (or utilities) when they are due whether the landlord complies with the Act regulations or tenancy agreement, unless the tenant has the right to withhold the rent (or utilities).

I find the unpaid utilities of \$117.19 is the responsibility of the Tenant and the Tenant does not have the right to withhold the unpaid utilities therefore I order the Landlord to retain the unpaid utilities in the amount of \$117.19 from the Tenant's security deposit.

Section 37 (2) (a) says that when a tenant vacates a rental unit the unit should be clean and undamaged except for wear and tear.

As the Tenant said she did not clean the fridge and she put some garbage out that the garbage collectors may not pick up and the Landlord said they had to hire a carpet cleaning company to remove a stain in the carpet, I grant the Landlord 5 hours of cleaning time and garbage removal at \$20.00 per hour in the amount of \$100.00. I order the Landlord to retain \$100.00 for cleaning cost from the Tenant's security deposit.

As the Landlord has been partially successful in this matter I order that the Landlord recover the filing fee for this proceeding of \$50.00 from the Tenant by retaining the \$50.00 from the Tenant's security deposit.

In summary, I order the Landlord to retain \$267.19 from the Tenant's security deposit of \$400.00 plus interest of \$2.52 totally \$402.52 and I also order the Landlord to return \$135.33 to the Tenant forth with.



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Conclusion

I order the Landlord to return \$135.33 to the Tenant at the Tenant's agent's address forth with.

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*.
