



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and his witness and both tenants.

At the outset of the hearing the landlord's agent noted that he was not seeking to retain the pet damage deposit in the amount of \$375.00 plus interest of \$6.64 as he had no issues with any damage from pets. As such, I amend the landlord's Application to exclude these amounts and order the landlord to return the pet deposit damage and correct interest owed immediately.

In addition the tenants testified that they had not received the landlord's evidence but that they did receive the notice of hearing documents. The landlord's agent could not speak directly to what was served and how and despite taking an opportunity to confer with his head office, he was unable to provide any one who could testify as to what was sent to the tenants. For these reasons, I have not considered the landlord's documentary evidence in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning and compensation; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 36, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on March 1, 2004 as 6 month fixed term tenancy that converted to a month to month tenancy on September 1, 2004 for a monthly rent, at the end of the tenancy, of \$885.00 due on the 1st of the month and a security deposit of \$375.00 and a pet damage deposit of \$375.00 were paid. The tenancy ended on September 30, 2010.

The landlord is seeking compensation as follows:

Description	Amount
Overholding rent – as landlord had to compensate new tenants	\$32.00
Rental Unit Cleaning	\$50.00
Security Deposit – for “hidden” costs	\$375.00
Interest	\$6.64
Total	\$463.64

The landlord testified that the tenants were aware of the need to conduct a move out condition inspection and it was the tenants that suggested meeting at 12:30 on the final day of the tenancy. But when the tenants did not attend the rental unit at that time the landlord’s agent went down to the office.

The landlord goes on to say that he waited in the office until the painter arrived and between 1:15 and 1:20 he arrived and they went up to the rental unit, at which time the tenants were not there and the agent advised the cleaners (who had been hired by the tenants) to ensure they complete some items.

After this occurred, the landlord and the painter started to leave and as they were nearing the elevator the tenant arrived and was confrontational. The painter had to leave to go to another job and he returned later.

The painter confirmed this version of events in his testimony. The painter stated that it was the landlord who determined that the rental unit was not yet ready for painters. Neither the painter nor the landlord confirmed what day the rental unit was painted.

The landlord testified that the tenancy that began after the end of this tenancy began on October 2, 2010, as per the tenancy agreement that was signed on September 28, 2010.

The landlord indicated he was seeking to retain the full security deposit, in addition to the specific amounts requested, because there were many hidden costs, such as call back charges for the painters, resulting from the delays caused by the tenants’ failure to vacate the rental unit by 1:00 p.m. on September 30, 2010.

The tenants agree that the events occurred but in the hearing they testified that they occurred approximately an hour earlier than stated by the landlord. In the tenants’ written summary of events the first paragraph states “The building caretaker and I met at approximately 1p.m.” but that he needed to get back to work and so had to keep the meeting short.

The tenants also stated that, while there had been a mix up with the cleaners they had originally hired they were able to hire new cleaners who were to continue cleaning for

about ½ hour after the tenant turned in the keys. The tenants did not return to the rental unit after the male tenant went back to work.

The tenants contend that the landlord did not offer any additional times for a move out condition inspection to be completed and in particular he did not provide a final notice to schedule an inspection as is required under the regulations.

Analysis

To be successful in making a claim for compensation for loss or damage the applicant must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any to mitigate the damage or loss.

Regarding the landlord's application to retain the full security deposit for "hidden costs", I find the landlord has failed to establish that a loss or damage exists and if there was loss or damage, the landlord has also failed to establish the value of any loss or damage, sufficient to claim the full security deposit and interest.

As to the landlord's request for compensation for overholding, I am not satisfied that when the landlord viewed the rental unit at 1:15 to 1:20 with the painter that if the cleaners were going to be finished within ½ hour that the painter could not have begun preparing and painting the rental unit.

Based on the landlord's testimony, I find that the new tenancy was not scheduled to begin until October 2, 2010 as the tenancy agreement was signed two days before these events and therefore the landlord was aware prior to these events that the new tenants would not be moving in until October 2, 2010 and this tenant should not be responsible for any compensation to the tenants.

In addition the landlord has provided no evidence of how the new tenants were compensated. That is to say, if the tenancy agreement was signed on September 28, 2010 and the tenants expected to move in on October 1, 2010 and provide rental a payment for the full month, the landlord provided no evidence from the new tenants as to what was paid for rent.

In relation to the tenants claim that the rental unit had been sufficiently cleaned, I accept that the tenants hired a cleaner and that the cleaner worked at least until 2:00 p.m. However, I also accept that the tenants left the rental unit prior to the cleaners finishing the job and never returned and therefore the tenants cannot be certain that the cleaners finished the job to an acceptable level.

While, I accept that the landlord failed to meet his obligations under the regulations to provide the tenants with a written notice of a move out condition inspection and that the landlord therefore extinguishes his right to claim against the security deposit, it does not prevent the landlord from claiming any compensation related to the tenancy.

As the tenants did not see the rental unit after the cleaners were finished, I accept the landlord's submitted Condition Inspection Report as an accurate reflection of the condition of the rental unit at the end of the tenancy and I further find that the charge of \$50.00 for an hour and half cleaning to be reasonable and I find the tenants are responsible for this charge.

And finally, as the landlord was only partially successful in this claim, I dismiss the landlord's application to retain the filing fee for this hearing.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50** comprised of charges for cleaning.

I order the landlord may deduct this amount from the security deposit (\$375.00) and interest (\$13.27) held in the amount of \$388.27 in satisfaction of this claim.

I order the landlord return the balance of the security deposit, the pet damage deposit and interest held on both deposits to the tenants. I grant a monetary order to the tenants in the amount of **\$726.54**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 14, 2011.

Residential Tenancy Branch