



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background & Evidence

Both parties agree to the following: The tenancy began on March 1, 2006 and ended on May 31, 2013. The tenants were obligated to pay \$1676.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. Both parties also agree that a condition inspection report was not conducted at move in or move out.

The landlord gave the following testimony:

The landlord stated that the tenants left the unit in such poor condition it was not suitable for re-renting. The landlord stated that she has incurred a large amount of costs to clean, repair, replace and renovate items in the unit. The landlord stated that she

trusted the tenants as friends and did not think the condition inspection report was necessary.

The tenants gave the following testimony:

The tenants stated that they adamantly dispute the landlords' entire claim. The tenants stated that they incurred many costs to maintain the unit. The tenant stated that they saw the landlord only three times over seven years and it never involved the landlord conducting repairs. The tenants stated that the landlord has a responsibility to conduct the inspection report at move in and move out and more importantly maintain the property in a reasonably clean and safe condition.

Conclusion

The landlord submitted evidence to the Branch and to the tenant one day prior to the hearing. The tenant was opposed to have it as part of the hearing. I have reviewed the evidence and find that it would not be prejudicial to the tenant to include it in this hearing. All testimony and documentary evidence was considered when making a decision.

The landlord is seeking a monetary order for damages to the unit that she alleges the tenants are responsible for, as well as lost revenue for being unable to re-rent the unit as it was not left in a clean and suitable condition by the tenant. The landlord is also seeking to retain the security deposit.

I will deal with the security deposit as follows:

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation from the beginning of the tenancy I am unable to ascertain the changes from the start of tenancy to the end of tenancy.

The landlord acknowledges that she was unaware of the requirement of conducting a condition inspection report at move in and move out; Section 23 of the Act sets out the requirement and Section 24 of the Act address the consequences of non – compliance.

23 (1) 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.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) **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.

The landlord has extinguished their right to make a claim against the security deposit in the matter before me.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord was unable to meet the #2 & #4 requirement as listed above. The landlord is seeking a monetary order for \$14, 541.06. Based on the above and on the balance of probabilities, I dismiss the landlords' application in its entirety.

As the landlord has not been successful she must bear the cost of the filing fee.

The tenants stated "we just want our seven hundred dollar deposit back and not a penny more". Based on my finding the tenants are entitled to the return of their deposit as requested. The landlord must return the deposit to the tenants.

I grant the tenant an order under section 67 for the balance due of \$700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order of \$700.00.

The landlords application is dismissed in its entirety.

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: August 14, 2013

Residential Tenancy Branch

