Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FLEXIBLE HOME BUYERS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 5, 2013. 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 in the Tenant's absence.

Issues(s) to be Decided

1. Are there damages to the unit and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 1, 2012 as a fixed term tenancy with an expiry date of May 31, 2013. Rent was $1,550.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of $750.00 on June 1, 2012. The Landlord said the Tenant moved out of the rental unit on May 31, 2013.

The Landlord said he partially completed a move in condition inspection report, but the Tenant did not sign it and he did not submit the report with the evidence package to support the application. As well the Landlord said that there was a written tenancy agreement, but he did not submit the agreement with the application package.

The Landlord said his total damage claim is $906.82 for damages that the Tenant did to the rental unit. The Landlord submitted a number of receipts to proof the expenses he incurred to repair the damage to the rental unit. As well the Landlord submitted two photographs of a door that was damaged. The Landlord said the Tenant kicked the door in during the tenancy.

The Landlord also requested to retain the Tenant's security deposit of $750.00 as partial payment for the damages to the rental unit.

As well the Landlord applied to recover the filing fee of $50.00 for the application costs.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

Further section 24 (2) of the Act says that if a condition inspection report is not completed in accordance to the regulations then the Landlord's claim against the Tenant's security or pet deposit is extinguished.

As the Landlord did not complete and submit a move in or move out condition inspection report his claim against the Tenant's security deposit is extinguished and the Landlord is unable to establish the condition of the rental unit at the start and end of the tenancy. I find that the Landlord has not established proof of the extent of damage that the Tenant may have caused to the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

As well, the Landlord has not been successful in this matter; therefore I dismiss the application to recover the filing fee of $50.00 from the Tenant.

<u>Conclusion</u>

The Landlord's application is dismissed without leave to reapply.

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: September 10, 2013

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Residential Tenancy Branch