



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNDC

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. The tenant has also filed an application seeking the return of double the security deposit. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The tenancy began on February 15, 2013 and ended on August 15, 2013. The tenants were obligated to pay \$3400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1700.00 security deposit. Both parties 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 damaged and messy. The landlord stated that the tenants removed items from the furnished apartment without authorization. The landlord stated that they had e-mailed the tenant the costs incurred to return the unit to a rentable condition. The landlord stated that they had not received the tenants forwarding address until they were served with "Notice of a Dispute Resolution Hearing" on September 18, 2013. The landlords are seeking \$1613.00.

The tenants gave the following testimony:

The tenants stated that they had e-mailed the landlord their forwarding address on August 30, 2013. The tenants stated that they left the unit in "exactly" the same

condition as when they received it and did not remove any items from the unit. The tenants are seeking the return of double the security deposit.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I address each party's claim and my finding as follows:

Landlords Claim -The landlord was seeking \$1613.00 for costs to clean, repair and replace items in the suite. 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 such as photos, witness statements or receipts prior to this tenancy commencing, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any.

The landlord has not provided sufficient evidence to support their claim and I therefore dismiss their application.

Tenant's Claim - The tenant is seeking the return of double the security deposit. Section 38 of the Act address the issue before me.

Section 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant stated that he had emailed the address to the landlord, which the landlord disputes. The landlord stated that the tenant was very “secretive” about his phone number and forwarding address. The landlord stated the parties did not correspond by e-mail during their tenancy. The tenant submitted what he alleges to be the e-mail of his forwarding address. The e-mail contains an address, with no further text, or logical response to any of the landlords’ questions.

The e-mail is a generic account with no personal information to consider. The landlord provided an email from September 26, 2013 referring to “finally” receiving the tenants forwarding address along with the notice of hearing documents dated September 18, 2013. As outlined below, the tenant must provide their forwarding address in writing. I am not satisfied that the landlord received the tenants forwarding address as stated by the tenant.

The landlord did file within the 15 days of receiving the tenants forwarding address, however the landlord had extinguished his right to make a claim to the deposit for not conducting the condition inspection report as outlined in Section 24(2) of the Act.

Based on the above I find that the tenant is entitled to the return of their security deposit but not the double as claimed.

The tenant is also entitled to the recovery of the \$50.00 filing fee.

Conclusion

The tenant has established a claim for \$1750.00. I grant the tenant an order under section 67 for the balance due of \$1750.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords application is dismissed.

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: October 29, 2013

Residential Tenancy Branch

