



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants and landlords attended the hearing. At the outset of the hearing, the tenants confirmed that they had received the landlords' evidence. The tenants confirmed that they did not submit any documentary evidence for this hearing. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

As per the testimony of the parties, the tenancy began on February 1, 2013 on a fixed term. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$550.00 and a pet deposit in the amount of \$550.00 at the start of the tenancy. The tenants vacated the rental unit on May 1, 2016.

The parties agreed that a written move-in condition inspection report was completed by the landlords' agent and tenants on January 28, 2013.

The landlord testified that because she could not locate the original move-in inspection report at the time of move-out, she created a new report to be used for the move-out inspection. The parties agreed that a move-out condition inspection was completed by the landlords' agent and tenants on May 1, 2016. The tenants testified that they refused to sign the move-out condition report as it was not in its original form.

The forwarding address was provided to the landlords in writing by way of registered mail on May 4, 2016.

Landlords

The landlords are seeking to retain the security deposit and pet deposit in the total amount of \$1,100.00 to offset damages to the rental unit. The landlords testified that the tenants damaged the front door jamb, dead bolt lock and garage door. The landlords allege the tenants pet damaged the stair risers; front and rear french windows and bedroom door. Additionally the landlords claim a lock and door handle were missing. The landlords submitted photographs taken on May 1, 2016 during the move-out inspection. The landlord submitted copies of the original move-in condition inspection report and move-out condition inspection report. The landlords have not repaired any of the above damage as the property was sold at the time the tenants vacated.

The landlords explained that the purchasers had a property inspection done and as a result of the deficiencies found, requested a \$5,000.00 reduction. The landlords agreed to a reduction of \$3,000.00. The landlords contend that they suffered this loss as a result of the tenants' damage.

Tenants

The tenants testified that the move-out condition inspection report was already completed by the landlord before the agent arrived to conduct the inspection on May 1, 2016. The tenants testified that the damage to the front door, lock and handle were noted on the original condition inspection report and they were not responsible for it. The tenants testified that the garage door bolt became loose over time and the tenants did not have the required tools to fix it. In regards to pet scratches the tenants denied responsibility, they testified that the tenants prior to them had a dog.

Landlords Reply

The landlords explained that in preparation to sell the unit, with the tenants' approval, they conducted some painting in April. It was during this time that the landlords noted the deficiencies of the rental unit. The landlords agreed they pre-wrote the deficiencies they noted in April in the portion of the condition inspection report that allows comments for damage the tenants are responsible for. The landlord denied that the prior tenants had a dog.

Analysis

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspection reports and joint move-out inspection reports are compared. The original joint move-in condition inspection report of January 28, 2013 entered into evidence by the landlord does not indicate damage to the front door jamb, dead bolt lock, garage door, stair riser or french windows. Nor does it list a lock or door handle as missing. The tenants signed this report in agreement that it fairly represented the condition of the rental unit at that time.

Regardless of whether the move-out inspection report was in its original form, the original form was found and submitted as documentary evidence. The tenants did not dispute that this was the original form and did not dispute its contents. Based on the absence of the damage on the original move-in inspection report and the photographs submitted by the landlords, I find the damage listed by the landlord on the move-out inspection report is damage that occurred during the tenants' tenancy.

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Although I find the damage listed by the landlord occurred during this tenancy, I find the landlords could not verify the amount of the loss with receipts as the work has not been conducted due to the sale of the home. Therefore I find the landlords have failed to prove a specific loss in accordance with the test above.

In relation to the landlords claim that they suffered a \$3,000.00 financial loss due to the damage, I find the landlord has provided insufficient evidence to substantiate this. Rather, I find that negotiating for deficiencies listed on a house inspectors report is part of the normal process of buying and selling a home. It remains unknown whether the deficiencies on the house inspectors report were the same deficiencies the tenants were responsible for, as the house inspectors report was not provided as evidence. For the reasons stated above, I dismiss the landlord's application to retain the security and pet deposit. I therefore order the landlords to return the security and pet deposit in the total amount of \$1,100.00 to the tenants.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for the application

Conclusion

I order the landlords to return the security and pet deposit to the tenants.

I issue a monetary order in the tenants favour in the amount of \$1,100.00 against the landlords.

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 18, 2016

Residential Tenancy Branch