



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 18, 2018. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance. .

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is the Landlord entitled to retain the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on August 1, 2016 as a 1 year fixed term tenancy with an expiry date of July 31, 2017 and then reviewed on another fixed term until April, 2018 and then the tenancy continued on a month to month basis. Rent was \$2,300.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,150.00 and a pet deposit of \$1,150.00 at the start of the tenancy. A move in condition inspection report was completed on August 15, 2016 and a move out condition inspection report was completed on June 29, 2018. This tenancy ended on June 30, 2018 and the Tenant gave the Landlord a forwarding address in writing on May 31, 2018.

The Landlord said the Tenants damaged the property and so he has made the following claims. First the refrigerator door seal was broken and was repaired at a cost of \$355.00. Secondly the garage door had a number of dents in it and the Landlord believes the damage was caused by the Tenants' children playing hockey in the garage and shooting pucks or balls against the door. The Landlord said the door cost \$1,662.93 to replace and he is requesting to retain part of the Tenants' security and pet deposits to cover the costs of the damage. The Landlord said his total claim is for \$2,017.93 plus the filing fee of \$100.00 if he is successful.

The Tenant said they completed the move out condition inspection report on June 29, 2018 and the Tenants' agreed to pay \$100.00 for damage to a wall by the fireplace. The Tenant continued to say they did not get a copy of the move out condition inspection report from the Landlord, but got a phone call a few days later saying there were additional damages and the Landlord was making an application to retain part of the Tenants security and pet deposits to pay for it. The Tenant said when he got a copy of the move out condition inspection report it had been altered and additional damages were added to the report. The Tenant continued to say the damage to the frig door was just normal wear and tear and it was not an issue at the move out inspection. Further the Tenant said they did not damage the garage door and he believes the dents were in the door when they moved into the unit. The Tenant said the damages the Landlord is claiming are not on the original move out condition inspection report and he is not responsible for the damage to the frig or to the garage door.

The Landlord said that he agreed the report was altered after the report was signed and the frig and garage door damages were added to the report. The Landlord said his agent missed this damage and he found it when he inspected the property. The Landlord said he phoned the Tenants immediately when he found the additional damage and the Landlord said the female Tenant agreed they did the damage.

The male Tenant said that is not correct they did not caused the damage to the garage door and the frig was normal wear and tear. The male Tenant said his wife did not say they caused the damage to the garage door.

The Landlord said in closing that he understands his agent missed the damage to the frig and garage door, but he believes the Tenants did the damage and therefore they should be responsible for the cost to fix the frig and the garage door.

The Tenant said they did not caused the damage to the garage door and the frig damage was not an issue at the move out inspection. The Tenant said they are not responsible for the cost to repair the damage and he would like his security and pet deposit back less the \$100.00 that he agreed to deduct from the deposits.

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. These reports are completed and signed by the parties to show agreement on the condition of a rental unit at the start and end of a tenancy. When a tenant signs a move in condition inspection report the tenant accepts the condition of the unit as of that date signed and then the tenant is responsible for any damage that happens to the unit, unless the damage is normal wear and tear. When a landlord signs a move out condition inspection report it means the landlord accepts the condition of the unit as of that date. The report provides an area for the landlord to indicate any damages caused by a tenant and if the parties agree the landlord may retain all or part of the tenant's deposit. The move out condition inspection report cannot be altered by one of the parties. Both parties must agree to any changes in the report.

In this situation the Landlord agrees he altered the move out condition inspection report without the agreement of the Tenants therefore; I find the alterations which include the damage to the frig and garage door are excluded from the report.

Further it is regrettable that the Landlord's agent missed the damage to the refrigerator and garage door but the Landlord's agent accepted the condition of the rental unit on June 29, 2018 by signing the report. As well the Tenant said they did not cause the damage to the garage door and the damage to the refrigerator was not an issue at the move out inspection.

I find the Landlord has not complied with the Act by changing the move out condition inspection report after it was signing. Consequently, this situation a case of just the Applicants word against the Respondents word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Landlord accepted the condition of the rental unit as at June 29, 2018 and the Landlord has not established grounds to prove the Tenant is responsible for the damage the Landlord found after the Tenant moved out.

Specifically the damage to the frig and garage door. I dismiss the Landlord's application because the Landlord accepted the unit as is on June 29, 2019, the Landlord altered a document and the Landlord has not proven his claim.

As well, the Landlord has not been successful in this matter therefore; I dismiss his application to recover the filing fee of \$100.00 from the Tenants.

Conclusion

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

Further, I order the Landlord to return the Tenants' security and pet deposits less \$100.00 forth with.

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: November 05, 2018

Residential Tenancy Branch