



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

MNSD To keep all or part of the security and pet damage deposit

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), and an order to retain a portion of the security deposit in satisfaction of the claim.

Both parties appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The landlord was seeking to retain a portion of the security deposit for a total claim of \$294.00

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for money owed, damages or loss. This determination is dependant upon whether or not the landlord has submitted proof that the specific damages being claimed are validly owed by the tenant to this landlord pursuant to *section 7* and *section 67* of the *Act*.

The burden of proof is on the applicant landlord to prove the claim.

Background and Evidence

The landlord submitted into evidence a written statement of claim, photographs showing damage to a glass door and stains on the carpet, a copy of the move-in and move out inspection reports, a written estimate for the costs to replace two panes of glass showing \$336.00, and a written estimate for the cost of repairing a carpet stain in the amount of \$126.00. The landlord testified that the fixed term tenancy began on September 1, 2007, at which time the tenant paid a deposit of \$1,050.00 and that the tenancy ended on August 31, 2008. The landlord testified that a glass door in the residence had sustained a crack in one pane that was there at the start of the tenancy. However, during the move out inspection it was discovered that a second pane of glass in the door had been cracked during the tenancy and the landlord had assigned an estimated repair cost of \$100.00. The landlord testified that the actual cost of repair was \$168.00 due to the nature of the heritage glass and the landlord is claiming this amount. The landlord testified that the tenant had explained that the glass was cracked by a bird having entered the home by way of the chimney, and the landlord remarked that this was not reported at the time it occurred. In regards to the carpet claim, the landlord testified that a pink stain was left in the carpet in one bedroom and that the tenant's attempts to clean it were marginally successful, but that the stain remained. The landlord has obtained a written estimate for dyeing the area at a cost of \$126.00. and is claiming this amount.

The tenant submitted into evidence a written statement of defense, a copy of the landlord's application for dispute resolution and a copy of the security deposit reconciliation indicating that \$126.00 was owed for the carpet cleaning and \$100.00 was owed for the broken glass pane.

The tenant testified that the tenant should not be responsible for reimbursing the landlord for the broken glass because the cause was not of the tenant's making having

occurred due to a bird flying down the chimney. The tenant acknowledged that the tenant failed to report this matter to the landlord when it transpired. In regards to the carpet, the tenant acknowledged that the stain was created by the tenant but pointed out that the carpet had other stains and was not a pristine carpet from the outset. The tenant testified that the tenant took all steps to eradicate the stain in a professional manner and suggested that this be considered as normal wear and tear.

The tenant also testified that the costs for the hearing should not be bourn by the tenant but should be shared by the parties.

Analysis

In regards to the landlord's claims for compensation for damage and loss, I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act.

However, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the Landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the

agreement or a contravention of the Act on the part of the Tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

In regards to the broken glass, I find that the landlord has fully proven that damage was done to the door, and that it occurred during the tenant's occupancy. However, in examining whether or not it was caused by the tenant in violation of the Act, I find that this incident was unforeseen and could not have been anticipated by either party. I find that it was not a matter that could have been prevented by the tenant and did not stem from any violation of the Act on the part of the tenant. A tenant should not be expected to be the landlord's insurance. That being said, I find that the tenant had a clear obligation under the Act to report this incident to the landlord at the time it occurred. Had this been done, it would have given the parties an opportunity to discuss the matter and then properly establish who held the liability and possibly may have avoided this portion of the dispute.

In regards to the carpet stain, I find that this could not be considered as normal wear and tear as put forth by the tenant. I further find that the applicant has met each element of the test for damages in proving that the damage/loss occurred and that it was caused by the tenant in violation of the Act, and in providing verified costs as well taking steps to mitigate the loss by repairing, rather than replacing, the carpet.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord has established a valid claim in the amount of \$176.00, consisting of \$126.00 for the carpet cleaning costs and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain this amount from the security deposit, pet damage deposit and interest of \$1,068.12 in satisfaction of the claim. The remainder of

the security deposit, in the amount of \$892.12 must be returned to the tenant forthwith and I grant an order in favour of the tenant for \$892.12. This order must be served on the landlord and may be enforced through the small claims court.

September 24, 2008

Date of Decision