

Dispute Resolution Services

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

Decision

Dispute Codes: MND MNR MNSD OPR

Introduction

This matter dealt with an application by the landlord for a monetary order for unpaid and damage to the rental unit. The landlord had also applied to retain all or part of the security deposit, and order for the filing fee and an order of possession.

Both the landlord and the tenant appeared at the hearing and were afforded a full opportunity to present evidence. I advised both parties that I would consider their oral testimony as well as their written submissions which had been received prior to the hearing, in reaching my decision.

As the tenant has vacated the rental unit on November 12, 2008, an order of possession is no longer required.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, and if so in what amount?

Background and Evidence

The facts of this tenancy are as follows:

- this tenancy lasted just over two months, ending on November 12, 2008 when the tenant vacated the rental unit
- the landlord holds a security deposit of \$425.00 and a pet deposit of \$425.00

- the tenant vacated pursuant to a Ten Day Notice to End Tenancy for Unpaid Rent
- the rent of \$850.00 was not paid by the tenant
- the landlord has claimed that there was damage to the carpet in the rental unit
- there was no written move in or move out inspection conducted

The landlord's evidence at the hearing is that the carpet was new at the start of the tenancy, and that when the tenant vacated there were several pulls which appear to have been caused by dog scratches. The landlord has requested an amount of \$275.00 to replace the carpet.

The tenant's evidence is that she acknowledges that the rent of \$850.00 is owed and does not object to the security deposit being applied against the rent. The tenant objects to the pet deposit being retained, as she disputes that there was any pet damage. The tenant claims that as there was no written inspections carried out, that she is not liable for any alleged damage. The tenants also states that the alleged damage to the carpet, was in an area under a dresser and as such could not have been caused by a dog.

Analysis

I find that the tenant is liable for the rent of \$850.00 for the month of November 2008 and for the \$50.00 filing fee for the cost of this application.

I do not find that the landlord has met the burden of proof that there was damage to the carpet and that if there was, that it was in any way caused by the tenant. The failure to complete the inspections required by law greatly diminish the validity of the landlord's claim in this matter. I therefore dismiss the landlord's application for a monetary order for damages.

I quote from s. 72 of the Residential Tenancy Act:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Conclusion

I order that the landlord is entitled to recover the amount of \$900.00. The landlord may retain the security deposit of \$425.00 in partial satisfaction of that amount. I further find that pursuant to s. 72 (2) (b) above, that the landlord may also retain the pet deposit of \$425.00 in partial satisfaction of the amount owed. I grant the landlord a monetary order in the amount of \$50.00 for the balance. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: December 1, 2008