



Dispute Resolution Services

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

Decision

Dispute Codes: MND MNDC MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order to retain part of the security deposit in compensation for monies owed by the tenant.

Issue(s) to be Decided

Is the landlord entitled to compensation for the amounts claimed?

Background and Evidence

On September 9, 2008 the landlord and tenant signed a tenancy agreement for a six-month fixed term tenancy to begin on October 1, 2008. The tenancy agreement includes a clause allowing for a liquidated damages fee of \$250, which the landlord characterized as a fee for the cost of re-renting if the tenant broke the lease. The tenancy agreement also contains a clause that requires the tenant to have carpets and drapes professionally cleaned upon vacating the premises. On September 8, 2008 the landlord and tenant conducted a joint move-in inspection and the tenant paid a security deposit of \$425.

On September 29, 2008 the tenant provided the landlord with a notice of her intention to end the tenancy effective October 31, 2008, on the basis that the bathroom flooring was molding and badly stained, the carpets were excessively stained, and the entire apartment would require considerable additional work to “bring it up to community standards of rental.” The landlord and tenant conducted a joint move-out inspection on October 31, 2008, and the report indicates that all items were in the same condition on October 31, 2008 as they were on September 8, 2008.

The tenant had not had the carpets cleaned and did not feel that she should be held responsible for the cost of cleaning the carpets given their condition and the fact that she had only resided in the unit for one month. The tenant also disagreed that she should have to pay the liquidated damages fee. The tenant's submission was that she had conversations with the property manager on September 1, 18 and 24, 2008 about the bathroom mold and her allergy to mold, and she had been led to believe that the bathroom flooring would be replaced and that the badly stained carpets would be cleaned, if not replaced.

Analysis

I find that the landlord is entitled to the liquidated damages claimed. I accept that the liquidated damages amount is a genuine pre-estimate of costs the landlord would likely incur if the tenant broke the lease. The tenant signed the lease and then chose to move out early rather than seek another remedy.

I find that the landlord is not entitled to the cost for carpet cleaning, as it was not reasonable in the circumstances. The carpets were in the same condition on move-out as they were on move-in, and the landlord provided no evidence that the carpets required cleaning after only one month of tenancy. It appears that the landlord is relying solely on the term of the tenancy agreement that requires the carpets and drapes to be professionally cleaned as justification for claiming carpet cleaning in this application, but the landlord has not required the tenant to pay for professional drape cleaning. I therefore dismiss that portion of the landlord's application.

Conclusion

I find that the landlord is entitled to \$250 in liquidated damages. Further, as the landlord's application was partially successful, the landlord is entitled to recovery of half the filing fee, in the amount of \$25. I order that the landlord retain \$275 from the security deposit. The landlord must return the remainder of the security deposit, \$150, plus applicable interest of \$1.67, to the tenant within 15 days of receipt of this decision.

Dated: December 12, 2008