



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order to retain part of the security deposit for costs incurred to clean the carpet and the drapes and to recover the filing fee. The landlord has already retained part of the security deposit and returned the balance to the tenant.

The notice of hearing dated December 02, 2008 was served on the tenant on December 03, 2008, by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

- Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?
- Was the landlord entitled to retain part of the security deposit?
- Is the landlord entitled to the recovery of the fee to file this application?

Background and Evidence

The landlord testified that the tenancy started on November 01, 2007 for a fixed term of one year. A move in inspection was conducted on the day the tenant moved in and this report is signed by the tenant. On October 31, 2008 which was the end date of the term of the tenancy, the tenant moved out and a move out inspection was conducted on that day. The landlord stated that the tenant was advised that the cleaning of the carpets and drapes needed to be done and the tenant agreed to allow the landlord to retain a portion of the security deposit to cover the cost of these two items.

The move out condition inspection report is signed by the tenant and the landlord mailed a cheque to the tenant in the amount of \$288.18 on November 07, 2008. This

amount consisted of the balance of the security deposit plus accrued interest, after a deduction of \$183.80 was applied. The landlord has submitted into evidence a receipt for costs incurred to clean the carpet and drapes in this amount. On November 13, 2008, the tenant called the landlord to complain about the amount of the returned security deposit and on Dec 01, 2008, the tenant delivered a letter to the landlord requesting the return of the entire security deposit. The landlord filed this application to ensure that the actions of the landlord were in keeping with the Act.

Analysis

Section 38 (4) of the *Residential Tenancy Act* states that a landlord may retain an amount from the security deposit if at the end of the tenancy, if the tenant agrees in writing that the landlord may retain the amount to pay an obligation of the tenant. A clause in the tenancy agreement states that the tenant must have the carpets and drapes cleaned professionally at the end of the tenancy. Based on the undisputed sworn testimony of the landlord, I find that landlord acted responsibly by conducting a move out inspection with the tenant, advising the tenant of the deficiencies in the condition of the rental unit, obtaining the tenant's verbal approval and signature on the report and returning the balance of the security deposit with accrued interest to the tenant in a timely manner. Therefore, I find that the landlord was entitled to retain the cost of cleaning the carpet and drapes in the amount of \$183.80.

I also find that the landlord is not entitled to the recovery of the filing fee as this application was not necessary due to the fact that the landlord had the approval of the tenant to retain part of the security deposit at the time the tenant moved out.

Conclusion

The landlord was entitled to retain a portion of the security deposit.

Dated January 20, 2009.