

Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, MNDC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of her security deposit and a cross-application by the landlord for an order permitting her to retain part of the security deposit. Both parties participated in the hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Background and Evidence

The parties agreed that in January 2008 the tenant paid a \$437.50 security deposit. The parties further agreed that at the start of the tenancy, the carpet in the rental unit was new and that at the end of the tenancy, the carpet was rolling in a number of places. The tenant testified that because the carpet was rolling, she did not shampoo the carpets at the end of the tenancy as she had learned that rolling carpets should be stretched prior to cleaning to prevent damage and she gave the landlord written permission to deduct \$110.00 from her security deposit to cover the cost of carpet cleaning. The landlord testified that the warranty on the carpet expired in 2008 and took the position that had the tenant advised her within the warranty period that the carpet was rolling, she would have been able to have the carpet stretched for no charge. As the warranty had expired, the landlord paid \$100.00 to have the carpet stretched. The landlord acknowledged that the stretching of the carpet was not the fault of the tenant, but claimed that the tenancy agreement requires the tenant to report repair issues to the landlord. The provision in question reads as follows:

The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take necessary steps to

repair damage to the rental property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property. If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may seek a monetary order through dispute resolution under the Act for the cost of repairs, serve a notice to end tenancy, or both.

The landlord further paid a total of \$157.50 to have the carpets cleaned and scotch-guarded. The landlord seeks to recover the cost of carpet stretching, cleaning and scotch-guarding from the security deposit.

The tenant acknowledged that she had received \$136.56 of her deposit from the landlord.

Analysis

In order to be successful in her application to retain any part of the security deposit for damages, the landlord must prove that the tenant caused the damage in question. It is clear that the tenant did not cause the rolling of the carpets. I find that the tenancy agreement did not require the tenant to report the rolling carpets to the landlord within a specified time period and accordingly deny the landlord's claim for the \$100.00 cost of stretching the carpets. I see no reason why the tenant should have to bear the cost of scotch-guarding the carpets and I deny the landlord's claim for \$42.00 for scotch-guarding. The tenant acknowledged responsibility for carpet cleaning and I find the landlord is entitled to retain \$115.50 from the security deposit. Because the tenant had already agreed that the landlord could retain \$110.00 from her security deposit for carpet cleaning, the landlord has been substantially unsuccessful in her application and I find the landlord must bear the cost of her own filing fee as well as the cost of the filing fee paid by the tenant.

The landlord collected a \$437.50 security deposit, \$136.56 of which was returned in early February and \$110.00 of which the tenant agreed the landlord could retain for carpet cleaning. Using February 9, 2009 as the date the \$136.56 was returned, as of that date \$3.84 in interest was payable and the landlord was holding a total of \$441.34. I find that the landlord is entitled to retain \$115.50 from the deposit, which means she

wrongfully withheld \$189.28. There is no interest payable on the \$189.28 withheld from February 10 to the date of this judgment. I order the landlord to repay to the tenant \$189.28 remaining from the security deposit and the \$50.00 filing fee paid by the tenant to bring her application for the return of the security deposit. I grant the tenant an order under section 67 for \$239.28. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$239.28.

Dated April 20, 2009.