

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 15, 2009 at 1634 hrs. The Tenant did not accept delivery of the registered mail package as supported by the evidence of the original envelope returned to the Landlord and submitted in the Landlord's documentary evidence. The Tenant was deemed to be served the hearing documents on April 20, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Landlords entitled to a Monetary Order under Sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began October 2, 2008 and ended March 31, 2009. Rent was payable on the first of each month in the amount of \$950.00 and the Tenant paid a security deposit in the amount of \$475.00 on September 17, 2008.

The Landlord testified that the address she used to send the Tenant the notice of the hearing package was the address provided to her by the Tenant on the move out inspection report as his forwarding address. The Landlord argued that this was the same address that she sent the Tenant his copy of the move out inspection report via regular mail and that the regular mail envelope was not returned to her.

The Landlord argued that the Tenant attended the move-in inspection on October 2, 2008 and the move-out inspection on March 31, 2009 and that the Tenant signed the report agreeing to the move out condition as listed on the report.

The Landlord testified that she tried to get the Tenant to sign a document assigning his security deposit towards the damages but that the Tenant told her that his family advised him not to sign any more documents.

The landlord is claiming \$956.98 to replace the carpet in the living room. The Landlord advised that the Tenant told her that his roommate left a pot on the stove and that the Tenant picked up the pot and brought it into the living room and accidentally dropped the pot on the carpet, causing a hole to be burned in the carpet. The Landlord argued that the burn is in the middle of the living room, in front of the fireplace, and that it can't be patched as it is located in an area where furniture is not placed and it would be noticeable if it were patched. The landlord advised that they purchased this home in March 2007 and that they replaced the carpet in the suite in approximately June 2007.

The Landlord is claiming \$50.00 for steam cleaning. She stated that she used her own steam cleaner to clean all of the carpets as required and listed in the tenancy agreement. The Landlord argued that it took her approximately 1 ½ hours to clean the carpet for the new tenants.

The Landlord stated that she had to clean the fridge and touch up the cleaning in the rest of the rental suite and that it took her approximately 2 ½ hours to complete the cleaning. The Landlord is claiming \$50.00 for cleaning

The Landlord testified that the two kitchen sink stoppers / strainers were missing and is claiming \$23.49 to replace them and is requesting to recover the \$50.00 filing fee from the tenant.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 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 regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the

version of events as discussed by the Landlord which was supported by their documentary evidence.

Carpet Repair/Replacement – The documentary evidence in the form of the move-in and move-out inspection report supports the Landlord's claim that the carpet was damaged during the tenancy. The *Residential Tenancy Policy Guideline # 37* stipulates that the normal life expectancy of carpet is 10 years and based on the testimony I find that the carpet was only 1 ½ years old at the time the tenancy began. Based on the aforementioned I find that the Landlord has proven the test for damages as listed above and I hereby approved the Landlord's claim in the amount of \$813.43 (8.5/10 of \$956.98).

Steam Cleaning - The Landlord has claimed \$50.00 to steam clean the living room and bedroom carpet. As per the move-out inspection report the Tenant has acknowledged that the living room and bedroom carpet needed steam cleaning. I find that the Landlord has proven the test for damages as listed above and I hereby approve the Landlord's claim in the amount of \$15.00. I have reduced the Landlord's claim as I am awarding the cost to replace the living room carpet above which left only the bedroom to be cleaned with the use of the Landlord's own cleaner.

Cleaning – The Landlord claimed \$50.00 for 2 ½ hours of cleaning the fridge and the rest of the rental unit. I find that the move-out inspection report substantiates the Landlord's claim for damage and I find that the Landlord has proven the test for damages. I hereby approve the Landlord's claim in the amount of \$37.50 (2.5 x \$15.00).

Sink Stoppers/Strainers – There is no mention of missing sink stoppers on the move-in or move-out inspection report and there is no other evidence to support the Landlord's claim that the stoppers went missing during the tenancy. Based on the aforementioned I find that the Landlord has not proven the test for damages and I hereby dismiss their claim of \$23.49.

Filing Fee – As the Landlord has primarily been successful in their claim, I hereby allow the Landlord to recover the \$50.00 filing fee from the Tenant.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlords are entitled to recover the filing fee from the Tenant as follows:

Carpet repair/replacement	\$813.43
Steam Cleaning Bedroom Carpet	15.00
Cleaning Fridge and rental unit	37.50
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$915.93
Less Security Deposit of \$475.00 plus interest of \$2.06	-477.06
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$438.87

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$438.87. The order must be served on the respondent and is enforceable through the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 14, 2009.

Dispute Resolution Officer