



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in August or September of 2005; that the Tenant paid a security deposit of \$387.50 on July 19, 2005; and that the tenancy ended on April 30, 2009. The parties agree that a condition inspection report was not completed at the beginning or at the end of this tenancy, as is required by sections 23 and 35 of the *Residential Tenancy Act (Act)*.

The Landlord is seeking compensation, in the amount of \$1,200.00, for damages to the upholstery on the bench of a kitchen nook. The Landlord submitted photographs of the upholstered bench that shows the upholstery is frayed. The Landlord stated that the upholstery was in good condition at the beginning of the tenancy, although she submitted no evidence to corroborate this statement. The Landlord stated the upholstery is approximately eighteen years old.

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The Tenant stated that the upholstery on the bench is in substantially the same condition at the end of the tenancy as it was at the beginning of the tenancy, other than normal wear and tear that occurred during her tenancy of approximately four years.

The Landlord is seeking compensation, in the amount of \$500.00, for damages to blinds in the rental unit. The Landlord submitted photographs of the blinds that show some of the horizontal slats of the blinds are damaged. The Landlord also stated that the ends of the cords appear to have been chewed by a cat. The Landlord stated that the blinds were in good condition at the beginning of the tenancy, although she submitted no evidence to corroborate this statement. The Landlord stated the blinds are approximately eighteen years old.

The Tenant stated that the blinds were not damaged during her tenancy.

The Landlord is seeking compensation, in the amount of \$300.00, for damages to the carpet in the dining room. The Landlord stated that an area on the carpet was excessively worn due to the fact that the Tenant used an office chair in that area. The Landlord submitted photographs of the carpets, although no unusual wear is visible in the photographs. The Landlord stated that the carpets are approximately eighteen years old and she acknowledges that they were not in pristine condition at the beginning of the tenancy.

The Landlord submitted a receipt that shows she paid \$494.94 to purchase new carpet and to have the carpet and underlay installed.

The Tenant acknowledged that she used an office chair in the dining room, which resulted in wear and tear to the carpet that would have been prevented if she had used a carpet protector. She argued that the carpet is old and that she should not be responsible for the cost of replacing the carpet.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that her property was damaged rests with the Landlord.

After hearing the statements of both parties regarding the condition of the upholstery on the bench in the kitchen nook, I find that the Landlord submitted insufficient evidence to

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show that the upholstery was damaged beyond what can be considered reasonable wear and tear. In reaching this conclusion, I was strongly influenced by the Tenant's statement that the upholstery was in substantially the same condition at the end of the tenancy as it was at the beginning of the tenancy, other than normal wear and tear, and by the absence of evidence, such as photographs or a condition inspection report, that corroborates the Landlord's statement that the upholstery was in good condition at the beginning of the tenancy.

The Act does not require tenants to repair damage that is due to reasonable wear and tear. As the onus of proving damages rests with the Landlord and the Landlord has failed to establish that the upholstery was damaged beyond reasonable wear and tear, I dismiss the Landlord's claim for compensation for damage to the upholstery.

After hearing the statements of both parties regarding the condition of the blinds, I find that the Landlord submitted insufficient evidence to show that the blinds were damaged during this tenancy. In reaching this conclusion, I was strongly influenced by the Tenant's statement that the blinds were in the same condition at the end of the tenancy as they were at the beginning of the tenancy, and by the absence of evidence, such as photographs or a condition inspection report, that corroborates the Landlord's statement that the blinds were in good condition at the beginning of the tenancy.

As the onus of proving damages rests with the Landlord and the Landlord failed to establish that the blinds were damaged during this tenancy, I dismiss her claim for compensation for damage to the blinds.

Based on the Tenant's admission that she used an office chair on carpet without protecting the carpet with a protective pad, I find that the Tenant caused some damage to the carpet that exceeded normal wear and tear. I therefore find that the Tenant failed to comply with section 37(2) of the Act when she failed to repair or compensate the Landlord for the damage to the carpet.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet that was damaged is approximately eighteen years old. I therefore find that the carpet has greatly exceeded its life expectancy and that the Landlord is not entitled to recover any portion of the cost of replacing the carpet.

In addition, I find that the nature of the damage to the carpet is minimal and that the damage caused by the Tenant has not significantly decreased the current value of the carpet. I based this decision primarily on the photographs of the subject carpet, in which I can not notice any significant damage. On this basis, I dismiss the Landlord's claim for compensation for damage to the carpet.



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Conclusion

I find that the Landlord has not established a monetary claim. I find that the Landlord's application has been largely without merit, and I dismiss her application to recover the filing fee from the Tenant for this Application for Dispute Resolution.

As the Landlord has failed to establish a monetary claim, I find that the Landlord must return the Tenant's security deposit of \$387.50, plus interest of \$13.73. The Tenant has been issued a monetary Order in the amount of \$401.23.

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: August 20, 2009.

Dispute Resolution Officer