

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

Service of the amended hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 18, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on September 23, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony provided that the month to month tenancy began on May 31, 2002 and ended on August 31, 2009 after the Tenant was served with a two month

notice to end tenancy for landlord's use. The monthly rent of \$916.70 was payable on the first of each month and a security deposit of \$425.00 was transferred to this property from a previous rental unit managed by the same property manager.

The Tenant argued that the original property manager completed a move-in inspection report and a tenancy agreement however the first property manager did not give the Tenant a copy of the documents.

The Landlord confirmed that she has managed this property since 2003, after the tenancy began. The Landlord argued that there were no written documents in the Tenant's file relating to the on-set of the tenancy.

The Landlord confirmed that she did not schedule a specific time for a move-out inspection report and did not issue the Tenant a written final notice to attend a move-out inspection. The Landlord stated that she did not provide evidence to prove the condition of the rental unit at the on-set of the tenancy or to prove the condition of the rental unit at the end of the tenancy.

The Landlord is seeking \$127.50 for cleaning the rental unit, \$97.65 for removal of garbage from the rental unit, \$147.00 in carpet cleaning (1/2 of the actual cost) and \$161.22 for the repair of a door and lock.

The Landlord stated that the Owner of the property could not remember the condition of the carpet at the onset of the tenancy so offered to pay ½ of the carpet cleaning costs.

The Tenant testified that the carpets were dirty at the onset of the tenancy and that she had a verbal agreement with the Owner that the Tenant would not have to clean the carpets at the end of the tenancy.

The Tenant argued that her daughter was at the rental unit cleaning all day long so the

rental unit was left in a clean condition and the Tenant should not have to pay to have the unit cleaned again.

The Tenant testified that she was willing to cover the costs to repair the door at \$161.22 and for the removal of garbage, left behind by the movers, at a cost of \$97.65.

Analysis

The Tenant has agreed to cover the costs to repair the door and remove the garbage for the total amount of \$258.87. ($\$161.22 + \97.65)

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

By the Landlord's own testimony there was no evidence provided to prove the condition of the rental unit at the on-set of the tenancy or at the end of the tenancy. The Landlord

also confirmed that she did not make arrangements with the Tenant to attend a move-out inspection and to complete the required form.

Section 35 of the Act provides that a landlord and tenant must inspect the condition of the rental unit and complete a move out inspection form before a new tenant begins to occupy the rental unit; or after the day the tenant ceases to occupy the rental unit; or on another mutually agreed day.

Section 36 of the Act provides that a right of the landlord to claim against a security deposit for damage to the rental unit is extinguished if the landlord does not comply with section 35 of the Act, as listed above.

Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss as listed above and I hereby dismiss the remainder of the Landlord's claim.

As the Landlord has been partially successful with their claim I award them \$25.00 recovery of the filing fee paid.

Monetary Order – Based on the Tenant's acceptance to pay for \$258.87 of the Landlord's claim I find that the Landlord is 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 as follows:

Repairs to damaged door and lock	\$161.22
Removal of garbage from rental unit	97.65
Filing fee	<u>25.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$283.87
Less Security Deposit of \$425.00 plus interest of \$15.05 from May 31, 2002 to January 7, 2010	-440.05
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$156.18

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$156.18. The order must be served on the Landlord and is enforceable through the Provincial Court 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: January 07, 2010.

Dispute Resolution Officer