

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, primarily the return of double her security deposit, reimbursement for carpet cleaning, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, served personally by the Tenant to the Landlord's place of business, on October 27, 2009.

The Landlord, the company owner, the Landlord's employee/witness, the Tenant and the Tenant's advocate appeared, acknowledged receipt of evidence submitted by the other, 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 Tenant proven entitlement to a monetary order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the tenancy agreement began on April 1, 2006 with rent payable on the first of each month in the amount of \$1,150.00. The Tenant paid a security deposit in the amount of \$575.00 on March 23, 2006.

The Tenant testified that the Landlord failed to return her security deposit in accordance with the Act, as it was post marked October 16, 2009, so the Tenant is seeking to have doubled the deposit amount. The Tenant argued that she provided written notice to end her tenancy on August 20, 2009, effective September 30, 2009, which included her forwarding address. The Tenant stated that she paid the full month's rent for September and that she vacated the rental unit on September 25, 2009.

The Tenant confirmed receipt of the Landlord's cheque dated October 14, 2009 for the full amount of her security deposit plus accrued interest. The Tenant stated that she has cashed the cheque and it cleared the bank.

The Landlord's employee/witness provided affirmed testimony that she received the Tenant's file and calculated the amount required to be returned to the Tenant and forwarded the file to the accountant who issued payment to the Tenant dated October 14, 2009. The employee/witness argued that the cheque was then placed in an envelope, addressed to the Tenant, and then put in the public mailbox located on the sidewalk outside their office on October 15, 2009.

The Tenant testified that she is claiming \$195.30 to reimburse her the cost of carpet cleaning. The Tenant argued that she was told to have the carpets professionally cleaned and then she later determined that the Landlord allowed a work crew to enter the rental unit with work boots causing the Landlord to have to clean the carpets again. The Tenant advised that she was originally mis-informed that the carpets were removed.

The Owner argued that the Tenant was provided with a rental unit with clean carpets at the onset of the tenancy agreement and that the Tenant was required to return the rental unit with professionally cleaned carpets at the end of her tenancy agreement. The Owner argued that it was not the Tenant's business if they chose to dirty the carpets or steam clean them after the tenancy ended.

### Analysis

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

After careful consideration of all of the evidence before me I make the following findings: the Tenant ended the month to month tenancy effective September 30, 2009, in accordance with the Act; the Tenant provided the Landlord with her forwarding address in writing on August 20, 2009; the Landlord returned the Tenant's security deposit in full, plus interest, via a cheque dated October 14, 2009, which was placed in a public mailbox on October 15, 2009; Canada Post picked up the envelope from the public mailbox; and Canada Post ran the envelope through the postmark machine on October 16, 2009.

Based on the above information I find that the Landlord complied with section 38(1) of the Act which provides that a tenant is entitled to the return of their security deposit within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address. As per the aforementioned I find that the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss her claim for the return of double her security deposit.

The Tenant is seeking the return of \$195.30 for costs she incurred to have the carpets steam cleaned prior to the end of her tenancy claiming that she should not have been held responsible to clean the carpet when the Landlord allowed the carpet to be dirtied, after her tenancy ended.

The Residential Tenancy Policy Guideline #1 provides that a tenant is responsible for periodic cleaning of carpets throughout the tenancy and at the end of a tenancy that was at least one year in length.

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit for a specified period however when the tenancy agreement ends and possession of the rental unit is returned to the landlord a tenant's rights or obligations are extinguished.

Based on the aforementioned I find that the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss her claim for return of the carpet cleaning costs.

As the Tenant has not be successful with her claim I decline to award her recovery of the filing fee.

Conclusion

**I HEREBY DISMISS** the Tenant's application, without leave to reapply.

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 20, 2010.

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Dispute Resolution Officer