



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied to keep the security and pet damage deposits and the tenant has applied for return of double the amount of the security and pet damage deposit.

The hearing was held by teleconference and was attended by the landlord, the tenant and her agent.

At the outset of the hearing I confirmed with the applicants the full extent of their applications. In the case of the landlord's application I confirmed the application was solely for the landlord to keep the security and pet damage deposits, which amounted to \$900.00, but that he was claiming for \$1925.00, which included damages over and above the amount of the deposits.

I advised that parties I would only hear matters relating to retention of the security deposit and that the landlord was free to submit a separate Application for Dispute Resolution claiming for damages to the rental unit, should he chose to do so.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Additionally, it must be decided if the tenant is entitled to a monetary order for double the amount of all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant provided the landlord with a letter dated September 28, 2009 that indicated her intention to end the tenancy on October 4, 2009. The landlord and tenant testified that in consideration for the short notice provided by the tenant, the tenant would help

find a replacement tenant for the landlord. The landlord had new tenants move into the rental unit on October 5, 2009.

The landlord has submitted into evidence:

- A summary of the landlord's claim;
- A copy of a tenancy agreement signed by the tenant and the previous owner of the property on September 1, 2006 for a 1 year fixed term tenancy that began on October 1, 2006 and converted to a month to month tenancy on October 1, 2007 for a monthly rent, at the end of the tenancy, of \$1,244.40, with a security deposit of \$600.00 and a pet damage deposit of \$300.00 paid on September 1, 2006; and
- 34 photographs showing carpeting, baseboards and holes in the walls.

The tenant submitted the following documents into evidence:

- A summary of the tenant's claim;
- A copy of a tenancy agreement signed by the tenant and the previous owner of the property on September 1, 2006 for a 1 year fixed term tenancy that began on October 1, 2006 and converted to a month to month tenancy on October 1, 2007 for a monthly rent, at the end of the tenancy, of \$1,244.40, with a security deposit of \$600.00 and a pet damage deposit of \$300.00 paid on September 1, 2006;
- A letter dated September 28, 2009 from the tenant to the landlord giving her notice to end the tenancy and her forwarding address; and
- Copies of email correspondence between the parties dating from between October 5, 2009 and October 6, 2009, regarding the security deposit.

The landlord testified that the carpet required cleaning, the walls had several holes and required painting, and there was minor damage to the carpet and a broken window latch.

The landlord confirmed that when he took possession of the residential property on July 16, 2008 the former landlord did not provide him with a copy of a move in Condition Inspection Report and that no move out Condition Inspection was completed when the tenant moved out.

The tenant testified that the former landlord did not complete a move in Condition Inspection Report. The tenant also testified that the stains in the carpet and many of the holes in the walls and ceiling were there prior to her taking occupancy of the rental unit.

The tenant stated she had steam cleaned the carpets 3 times since the start of the tenancy and the last time was completed 3 or 4 months, by professional cleaners, prior to the end of the tenancy. The tenant provided no confirmation of any carpet cleaning through the tenancy.

The landlord testified that he had to clean the carpets twice – once just before the new tenants moved in and then once a couple of weeks later after the new tenants complained of the smell. He further testified that it appeared the tenant had not even vacuumed the carpet as there were wood chips and dog hair throughout.

The landlord could not confirm the age of the carpets nor could he confirm the last time the rental unit was painted. The landlord claimed that he needed to have the carpets cleaned twice at a cost of \$225.00; that he needs to paint at an estimated cost of \$1,200.00; and for repairing all the holes, take out hooks, fix ripped carpet and fix a window handle for an estimated cost of \$500.00. The landlord submitted no receipts or written estimates into evidence.

Analysis

Section 38 of the *Act* states that a landlord must, within 15 days after a tenancy ends and the landlord receives the tenant's forwarding address, either repay the security and pet damage deposits with interest less any mutually agreed upon deductions or file an Application for Dispute Resolution to claim against the deposits.

The section goes on to say that should the landlord not comply with this requirement the landlord must pay the tenant double the amount of both deposits. The tenancy ended on October 4, 2009 and the landlord received the tenants forwarding address on September 28, 2009.

The landlord submitted an Application for Dispute Resolution to claim against the deposits on October 16, 2009, well within the legislated requirement. I therefore find the tenant is not entitled to double the amount of the security and pet damage deposits and I dismiss this portion of the tenant's application.

Section 23 of the *Act* requires the landlord and tenant to inspect the condition of the rental unit prior to possession of the rental unit and prior to the day a tenant starts keeping a pet. The subsequent report from the inspection must be signed by both parties and the landlord must provide the tenant with a copy of the report.

Section 35 of the *Act* requires the landlord and tenant to inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit. The subsequent report from the inspection must be signed by both parties and the landlord must provide the tenant with a copy of the report.

Section 24 states that failure of the landlord to complete the move in inspection and subsequent report his right to claim against the security deposit is extinguished. Section 36 states that failure of the landlord to complete the move out inspection and subsequent report his right to claim against the security deposit is extinguished.

As the landlord has failed to provide a copy of a move in Condition Inspection Report, as both parties indicated that one was not completed, and since no move out Condition Inspection Report was completed by the landlord, I find the landlord has extinguished his right to claim against the security deposit. I therefore dismiss the landlord's application to keep all or part of the security deposit.

Conclusion

Based on my findings above, I find that the tenant is entitled to a monetary order pursuant to Section 67 in the amount of **\$978.40** comprised of \$600.00 security deposit; \$300.00 pet deposit; \$28.40 interest; and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the landlord was unsuccessful in his application, I dismiss his application for recovery of his filing fee for this application

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: February 11, 2010.

Dispute Resolution Officer