



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damages to the rental unit, for cleaning expenses, to recover the filing fee for this proceeding and to keep part of the Tenant's security deposit in payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing by registered mail on October 27, 2009 to a forwarding address provided by the Tenant. The Landlord said that the hearing package was returned to her unclaimed so she reserved it with her evidence package by registered mail on February 5, 2010. Based on the Landlord's evidence, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental unit and cleaning expenses and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on May 1, 2007 and ended on or about October 15, 2009 when the Tenant moved out. The Tenant paid a security deposit of \$650.00 at the beginning of the tenancy.

The Landlord said she purchased the rental property in August of 2009. The Landlord also said that she did not believe that the current owners did a move in inspection report with the Tenant. The Landlord claimed that she left telephone messages and e-mail messages for the Tenant asking him to participate in a move out inspection on October 15, 2009 but the Tenant refused to participate. Consequently, the Landlord did a move out inspection without the Tenant on October 15, 2009 and took photographs of the rental unit on that day.

The Landlord claimed that the Tenant damaged a section of laminate flooring which appears to have burn marks. The Landlord said the flooring was newly installed as a condition of the Tenant entering into his tenancy agreement with the previous owners. The Landlord also said she obtained verbal estimates of the cost to repair that section of the floor. The Landlord claimed that the Tenant did not leave the rental unit

reasonably clean at the end of the tenancy and that she incurred expenses to bring it to that standard.

Analysis

In an e-mail to the Landlord on October 14, 2009, the Tenant claimed that he did not intend to participate in a move out inspection with the Landlord and further stated that it was his opinion that he was not liable to the Landlord for any condition issues with the rental unit that were sustained prior to her purchasing the property.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit clean and undamaged except for reasonable wear and tear. The Tenant cannot rely on the principle, *Caveat emptor*, as he argued because it only applies between the purchaser and vendor or a property not between a purchaser and a third party who is a stranger to that agreement. Furthermore, there is nothing in the Act that prevents a new property owner from claiming damages from a Tenant for damages sustained to a rental unit prior to their purchasing the property.

Instead, on the sale of a rental property, an owner's or landlord's obligations under the tenancy agreement are transferred to the new owner or landlord. Similarly, the Tenant's obligations under the Act or tenancy agreement also are transferred to a new owner or landlord after a property is transferred. As a result, I find that the Landlord may apply for compensation for any damages that were caused by the Tenant during the entire tenancy.

In the absence of any evidence from the Tenant to the contrary, I find that there is sufficient evidence to conclude that he damaged the laminate flooring during the tenancy. Based on the Landlord's photographs of the flooring, I further find that the burn marks are not reasonable wear and tear but likely the result of neglect. Consequently, I find that the Landlord is entitled to reasonable compensation for that repair and I award her the amount claimed of \$400.00 for materials and labour.

Similarly, in the absence of any evidence from the Tenant to the contrary, I find that the Landlord's photographs of the condition of the rental unit to be an accurate depiction of the state of cleanliness of the rental unit on October 15, 2009. I further find that the rental unit was not left reasonably clean in that the bathtub, kitchen sink, dishwasher, refrigerator, microwave, washing machine, kitchen cabinets and drawers and floors had debris and dirt. Consequently, I find that the Landlord is entitled to recover reasonable cleaning expenses of \$180.00. As the Landlord has been successful in this matter, she is only entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding.



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I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep \$630.00 from the Tenant's security deposit and to return the balance of the security deposit and accrued interest to the Tenant as follows:

Security deposit:	(\$650.00)
Accrued interest:	<u>(\$16.38)</u>
Subtotal:	(\$666.38)
Less: Floor repair:	\$400.00
General cleaning:	\$180.00
Filing fee:	<u>\$50.00</u>
Balance owing:	(\$36.38)

Conclusion

The Landlord's application is granted. The Landlord is hereby ordered to return the balance of the Tenant's security deposit in the amount of \$36.38 to the Tenant. 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 23, 2010.

Dispute Resolution Officer