

DECISION

Dispute Codes

For the tenant – MNSD

For the landlord – MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant requests the return of his security deposit. The landlords seeks to keep the security deposit and to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulations or tenancy agreement. The landlords also seeks to recover the cost of filing this application.

Both Parties served the other Party with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to recover his security deposit?
- Are the landlords entitled to keep all or part of the security deposit towards unpaid rent?
- Are the landlords entitled to a monetary Order for money owed or compensation for cleaning the rental unit including the carpets?

Background and Evidence

This month to month tenancy started on October 01, 2007. The tenant paid a monthly rent of \$750.00 which was due on the first of each month. The tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00 on October 01, 2007.

The tenant testifies that he gave the landlord his forwarding address on October 31, 2009. The tenant agrees he did not give the landlord written notice but thought the landlord had accepted his verbal notice to end the tenancy. The tenant seeks the return of his pet damage deposit and agrees the landlord may keep his security deposit of \$375.00 for the cleaning of the suite.

The landlord's agent testifies that the tenant had taken on a roommate to mitigate his loss when he had to leave the rental unit. It was agreed with the landlord that this roommate could take over the tenancy if he met the landlord's criteria. The tenant gave his Notice to the landlord verbally on October 21, 2009 and stated that he would be moving out on October 23, 2009. The landlords decided that the tenants' roommate was not suitable and informed the tenant that his roommate remained the tenants' responsibility. The roommate moved out on October 31, 2009.

The landlord's agent claims the tenant did not clean the rental unit at the end of the tenancy. The landlord incurred costs of \$332.00 to have the unit cleaned. The landlord claims the tenant did not clean the carpets at the end of the tenancy and kept a dog in the unit. The landlord incurred costs of \$52.50 to clean two bedroom carpets which were heavily soiled.

The landlord's agent testifies that a move in condition inspection was conducted at the start of the tenancy; however no move out condition inspection was conducted at the end of the tenancy as the tenant did not return to the unit.

The landlord claims the tenant did not provided his forwarding address until they had notice of this hearing.

Analysis

In this instance the tenant has not disputed that he did not have time to carry out a thorough clean of the rental unit. Therefore, I find the landlord is entitled to recover the cleaning costs

incurred of **\$332.00**. During the hearing the tenant agreed the landlord could keep his security deposit to cover the cleaning of the rental unit.

Section #1 of the Residential Tenancy Policy Guidelines refers to the tenants responsibilities for cleaning the carpets:

CARPETS

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Consequently, I find the tenant lived in the property for more than one year and kept a dog which was not caged; therefore he is responsible to reimburse the landlord for the cost of carpet cleaning to an amount of **\$52.50**.

I find #15 of the addendum to the tenancy agreement signed by both Parties on September 27, 2007 indicates that the tenant may end a month to month tenancy by giving the landlord at least one month's written notice. This notice must be received on the day before rent is due, for the tenancy to end at the end of the following month. Consequently, I find the tenant gave verbal notice to the landlord on October 21, 2009 and the tenancy ended on October 31, 2009 after the tenants roommate moved out. In order to have ended the tenancy on October 31, 2009 the tenant should have given the landlord his written notice on September 30, 2009. I find therefore, that the landlords are entitled to recover rent for November, 2009 of \$750 from the tenant pursuant to section 67 of the *Act*.

Sections 35(3) and 35(5) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the

condition inspection report when the tenant moved out, I find the landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting money from a security or pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlords to keep **\$765.07** from the tenants' security, pet damage deposit and accrued interest to compensate them for the unpaid rent and cleaning. As the tenant has indicated he only wants his pet damage deposit returned I find his application for this is dismissed.

As the landlords have been successful with their claim I find they are entitled to recover the \$50.00 filing fee for this proceeding pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Loss of revenue for November, 2009	\$750.00
Cleaning	\$332.00
Filing fee	\$50.00
Subtotal	\$1,184.50
Less security and pet damage deposits plus accrued interest	(-\$765.07)
Total amount due to the landlords	\$419.43

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$419.43**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenants' application is dismissed 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: March 17, 2010.

Dispute Resolution Officer