

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for damages to the rental unit, for money owed or compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered post on November 10, 2009. The tenant confirmed she had received them.

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

The landlords' agent stated that he had not received the tenants' evidence but was happy to continue with the hearing.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent of \$25.00?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed for carpet and drape cleaning?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

This tenancy started on October 01, 2004. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. The tenant paid a monthly rent of \$913.00 which included \$40.00 for two parking bays. The tenant paid a security deposit of \$387.50 on September 20, 2004. The tenancy ended on October 31, 2009 and the tenant provided the landlord with her forwarding address in writing on this date.

The landlord has applied for outstanding rent arrears of \$25.00. The landlords' agent was unsure when the tenant owed this amount from and no details were provided in the landlords' evidence.

The landlord claims that the move in and move out inspection details some damages to the rental unit. There is a stain on a small section of the living room ceiling. This had to be retextured; there was a hole behind the door in the entrance hall which appeared as if the door knob had gone through the wall; there was a hole in the wall by the heat register in a bedroom where the cable wire was; there were picture hook holes on the walls. The total cost for these repairs is \$75.00.

The landlord claims an amount of \$95.00 for carpet cleaning and \$30.00 for drape cleaning. The landlords' agent states there is a section on the tenancy agreement which states the tenant is responsible for cleaning the carpets and drapes at the end of the tenancy.

The tenant states she does not owe any rent to the landlord and has had similar problems during her tenancy where she has been sent notices of rent arrears where none existed and the landlords have agreed it was their mistake each time.

The tenant claims the mark on the ceiling was not done during her tenancy but suggests it was a leak from the unit upstairs. The tenant claims the hole the landlord states is behind the entrance door is not a hole but a small dent because the landlord did not fit a door stopper to the wall to prevent the door knob hitting the wall. The tenant claims the hole in the wall in the bedroom was there at the start of her tenancy as it is a hole the cable wire is fed through and she had cable in the unit when she took over the tenancy. This hole must have been overlooked on the move in condition inspection. The tenant claims she did hang some pictures on the walls but used the small hanging hooks and suggests that these small marks are normal wear and tear.

The tenant states that she did clean the carpets and drapes at the end of her tenancy. She has provided a carpet cleaning receipt which is dated October 28, 2009. The tenant states she cleaned and pressed the drapes at the end of the tenancy. The landlords' agent accepts the tenant did clean the carpets and drapes and withdraws this section of the claim.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent I find there is no evidence to support the landlords claim that the tenant has rent arrears of \$25.00. Consequently this section of the claim is dismissed.

With regard to the landlords claim of \$75.00 for repairs to the ceiling and walls I find although the landlord has provided a move in and move out condition inspection report which details the stain on the ceiling, holes in the wall and picture hook holes; I find In this matter the landlord has the burden of proof and must show that the damage was caused by the negligence on the part of the tenant. When a landlord's evidence is contradicted by the tenant, the landlord will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the landlord has not provided sufficient evidence that the damages were anything more than normal wear and tear after a tenancy of 5 years or that the tenant was negligent in any way as suggested by the landlord. The landlord has provided no photographs or estimates for the repairs and as such I dismiss this section of the landlords claim.

With regard to the landlords claim for the cost of carpet cleaning of \$95.00 and drape cleaning of \$30.00; as the tenant has provided a receipt in her evidence the landlords agent was happy to accept this receipt as proof that the carpets had been cleaned at the end of the tenancy despite not having received a copy of the receipt. The landlords' agent was also happy to accept that the tenant cleaned and pressed the drapes at the end of the tenancy. Consequently the landlords' agent has withdrawn this section of the claim.

As the landlord has not been successful with their application I find they must bear the cost of filing their own application.

Conclusion

The landlords' application is dismissed in its entirety, without leave to reapply.

I ORDER the landlord to return the tenants security deposit of \$387.50 plus accrued interest of \$13.73 to a total sum of **\$401.23** to the tenant within **seven days** of receiving this decision.

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 18, 2010.

Dispute Resolution Officer