

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by conference call to deal with the landlord's application for a monetary order for damage to the rental unit, site or property, to be permitted to retain all or part of the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

Both parties and a witness for the landlord appeared, gave affirmed evidence and the parties were given the opportunity to cross examine each other and the witness on their evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to retain any portion of the security deposit in satisfaction of the claim?

Background and Evidence

This tenancy began on June 1, 2006 as a fixed term tenancy to expire on May 30, 2007, and then reverted to a month-to-month tenancy. Rent in the amount of \$875.00 per month was payable on the 1st day of each month. On May 1, 2006, the tenant paid a security deposit in the amount of \$437.50 and \$15.00 for a bike room deposit.

The landlord is claiming \$48.00 for cleaning the unit after the tenants moved out, as well as \$190.00 for carpet cleaning and \$70.00 for taking items belonging to the tenants to the dump. The landlord claims that the cleaning was done by the building manager, who was paid \$12.00 per hour for 4 hours of cleaning. Cleaning was required behind the stove and fridge, inside the oven, the window tracks and a thick film of oil needed to be cleaned off of the fan in the dining room. He also testified that Island Carpet completed carpet cleaning and charged more than the \$190.00 claimed, and had to do it 3 times. He testified that there was alot of oil or grease, likely cooking oil on the

carpet, which required extra cleaning. When questioned about the actual cost, the landlord did not know that figure, but relied on the \$190.00 charge indicated on the move-out report.

The landlord further testified that the tenant had left a couch and a coffee table beside the dumpster. He hired H & L Hauling to remove those items, who charged \$140.00 for a full load, and the landlord has charged half of that, for a half load against the tenants. The tenant testified that she and her family resided in another unit in the building for over 4 years and then moved to this unit. She and her family moved out of the building due to the noise in the upper unit. She complained to the previous manager but the noise did not stop. After her second complaint, a written notice went to the tenants in the upper suite and the noise stopped for awhile, but started again. She stated that her family suffered from this noise for about 6 months before deciding to move out, and on December 23, 2009, she gave written notice to vacate the unit on January 31, 2010.

The tenant gave evidence that she and her family vacated the unit on January 23, 2010 and she returned to this unit to complete the cleaning for several days after that. She testified that the stove was too heavy to move, and when she contacted the Residential Tenancy Branch she was advised that if it wasn't on wheels, she was not responsible for moving it to clean behind it.

She did not believe the carpet in this unit required cleaning twice when they vacated it. She stated that when she moved from the other suite, the landlord told her that only the hallway would be cleaned and told her the cost would be \$90.00. Further, she contacted a cleaning company who told her that it would only need cleaning once. The tenant also testified that on January 20, 2010, the manager brought perspective tenants to look at the unit, and she noticed that they did not remove their shoes, nor did the building manager. This happened on at least two occasions. The landlord's witness replied that he didn't take off his shoes because the carpet was so dirty.

The tenant testified that the furniture left near the dumpster was all in good shape, and she had told friends that they could take them. She further stated that there was no notice from the building manager that they couldn't leave the items or they would be

charged, and from the date of moving, January 23, she went back to the unit daily to clean. No one mentioned it to her, and she had noticed that other tenants left items there for people to take away for free. She stated that she would have donated the furniture to charity had she known the landlord was going to take them away and there would be a charge. When she questioned why she was not told about the charge, the landlord responded that he found out after she was there that the items belonged to her; she did not tell the landlord that she had left the items there.

On January 31, 2010 the parties completed the move-out condition inspection report, but the tenant disagreed with the report and did not sign it. The witness for the landlord testified that during that condition inspection he estimated the cleaning to be 4 hours and told her there would be charges against her security deposit but he didn't know how much at that time. He stated that she refused to sign the document because she did not want to pay the amounts claimed. He also stated that he met with the tenant on February 8, 2010 and told her the carpet would be cleaned twice at a cost of \$190.00 and \$70.00 for hauling the furniture items to the dump. It was at this time that the tenant left her forwarding address with the landlord.

Analysis

The move-in/move-out condition inspection report has some illegible writing on it with respect to the stove/vent fan, and shows that at move-out it required cleaning with a labour charge of "24." The same applies to the living room window tracks. I accept from the evidence of the landlord and witness, that it means an estimate of 2 hours to clean those items at a charge of \$12.00 per hour, or \$24.00. It also shows that several walls and floors required cleaning, however the only "charges" on the report are for the stove, window tracks in the living room, carpet cleaning and hauling items to the dump.

The landlord's building manager and witness testified that the amounts on the condition inspection report were estimates because he didn't know the actual costs at the time. No receipts for hauling or carpet cleaning were produced. The burden of proving those amounts lies with the landlord.

Damage claims require satisfying a 4 part test:

- a) To prove the damage or loss;
- b) To prove that the damage or loss occurred because of a breach of the *Act* or Tenancy Agreement;
- c) To prove the amounts;
- d) To show what the party did to mitigate the damage or loss.

The *Act* anticipates that if any cleaning or repairs are required, the move-out condition inspection is to allow the tenant an opportunity to correct the situation. If the tracks on the windows needed cleaning, he ought to have told the tenant that rather than “charge a fee” on the condition inspection report for not having done so. Further, the condition inspection report is not detailed enough to convince me that the tracks in the windows were clean when the tenant moved in. I do not accept the evidence of the landlord and witness that the tenant didn’t clean behind the fridge and stove, because I have no evidence before me that the appliances were pulled out for viewing when the move-in inspection was completed.

I find that the tenant ought to have told the landlord that the items she left by the dumpster did in fact belong to her and why she left them there. I further find that the landlord had an obligation to haul the items away, but the landlord has failed to prove the amount of that claim.

Conclusion

I find that the claims by the landlord as against the tenant are estimates only, and as such, the landlord has failed to prove the claim.

The landlord’s application is hereby dismissed without leave to reapply. I direct the landlord to return the security deposit and bike deposit 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: April 19, 2010.

Dispute Resolution Officer