

## **DECISION**

**Dispute Codes**      MNSD, MNDC

### **Introduction**

This hearing was convened by conference call on this date to deal with the tenant's application for return of the security deposit.

Both parties attended the hearing and gave affirmed testimony.

During the course of the hearing, the landlord consented to amending the application to include a monetary order in favour of the tenant for reimbursement of rent paid when she had not occupied the unit.

### **Issues(s) to be Decided**

Is the tenant entitled to return of the security deposit, or double the amount of the security deposit?

Is the tenant entitled to a monetary order for reimbursement of rent paid, or compensation under the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

The tenant testified that she had been residing with her mother, however, her mother was a heavy smoker and the tenant has asthma. She had been in touch with a homeless outreach worker who found a place for her to live. On April 27, 2009, the tenant was interviewed by workers at this residence. The landlord's agent testified that the usual reference checks were by-passed for this tenant due to her circumstances, and she viewed the suite on that date.

A smoker had also been residing there, and the tenant told the landlord's agent that she was sensitive to the smoke smell, and that it would need to be thoroughly cleaned. She stated that the agent told her that their carpet cleaner person was away, and the cleaning would have to wait until his return. This evidence is disputed by the landlord,

who testified that they have 6 cleaners at their disposal, so waiting for one to return was not an issue.

The landlord's agent further testified that on April 29, 2009 the unit was cleaned, and on May 11, 2009, the tenant signed for the key and key fob.

There was conflicting testimony about how the parties kept in touch, however, the tenant testified that she offered to clean the carpet and drove there twice with a friend, but the landlord's agent declined her offer. The tenant testified that she could not move into the unit until the carpets were cleaned due to her health issues.

Evidence was provided by the landlord that the Ministry had issued a cheque in the amount of \$187.50 for the security deposit, made payable to the tenant, but the tenant did not give any money to the landlord for that security deposit. Further, the tenant was not able to produce a receipt for having paid it. The parties agree, however, that the landlord had been paid \$375.00 for rent for the month of May, 2009 as well as for June, 2009 which was returned by the landlord to the Ministry because the tenant did not move in.

When questioned about the condition of the unit, the landlord's agent testified that the carpets were never cleaned, and his intention was to put an area rug over the existing carpet to cover cigarette burns.

### **Analysis**

The tenant was unable to produce a receipt or any other evidence that she did in fact pay for the security deposit. I am therefore unable to award the return of the security deposit to the tenant.

Section 32 of the *Residential Tenancy Act* states as follows:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further, the Residential Tenancy Policy Guideline with respect to carpets, at section 1, states as follows:

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. 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.
4. 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.

### **Conclusion**

The tenant's application for return of the security deposit is hereby dismissed without leave to reapply.

As for the monetary order, I find that the tenant has established a claim for \$375.00 rent and I grant the tenant an order under section 67 for the balance due of \$375.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 21, 2010.

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Dispute Resolution Officer