

## **DECISION**

Dispute Codes      MNSD, MND, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for compensation for damage to the rental unit; damage or loss under the Act, regulation and tenancy agreement; retention of the security deposit; and, recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to the other party's submissions.

The landlord stated that documentary evidence submitted by the tenant was received within five days of this hearing and the landlord had not had the opportunity to review the evidence. I find the evidence was submitted late. I was satisfied that some of the evidence was relevant and I have considered the tenant's evidence in making this decision. Since the tenant's evidence was only a few pages I proceeded to review it with the parties during the hearing.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to liquidated damages?
2. Has the landlord established an entitlement to recover carpet cleaning costs from the tenant?
3. Is the tenant entitled to recover a portion of the amounts withheld from the security deposit?

### Background and Evidence

The parties provided undisputed evidence that the tenancy commenced July 1, 2009 for a fixed term set to expire June 30, 2010. The tenant was required to pay rent of \$1,295.00 on the 1<sup>st</sup> day of the month. The tenant paid a \$647.50 security deposit at the beginning of the tenancy. The tenant vacated the rental unit on November 30, 2009 and a move-out inspection was conducted on that date. Replacement tenants were found for December 2009 and the landlord did not incur a loss of rent. The landlord refunded \$28.89 of the security deposit to the tenant on December 7, 2009 and made this application December 10, 2009.

In making this application, the landlord is seeking to authorization to retain \$400.00 from the security deposit for liquidated damages and \$218.61 for carpet cleaning costs. The landlord submitted that the tenancy agreement provides that the landlord may charge liquidated damages where the tenant ends the tenancy before the expiration date of the fixed term and that the liquidated damages are intended to cover administrative costs associated with ending the existing tenancy and starting a new tenancy. The landlord claimed that the replacement tenants had to be screened and that much time and effort goes into re-renting a unit.

The landlord submitted that the tenancy agreement provides that a tenant must have the carpets professionally cleaned at the end of the tenancy and provide a copy of the invoice at the end of the tenancy. The landlord submitted that a cleaning requirement checklist and a move-out letter was sent to the tenant prior to the end of tenancy and that the checklist and move-out letter specifies that a carpet cleaning receipt must be provided at the time of move-out. The landlord was of the position that an invoice shows that the carpets are cleaned to a professional standard; however, the tenant only provided a note written on a piece of paper by the tenant's carpet cleaner. Further, the caretaker performing the move-out inspection proceeded to call the landlord and request that the landlord's carpet cleaners come in to clean the carpets. The landlord called in their own carpet cleaners that same day and incurred a cost of \$218.61 which is part of this claim.

The tenant objected to the requirement to pay liquidated damages and noted that the liquidated damages clause indicates the charge is only an option. The tenant also submitted that she had enquired about the liquidated damages clause at the time of signing the tenancy agreement and was told by the landlord's agent that some consideration to circumstances may be given if a tenancy ends early. The tenant was of the position that she had to end the tenancy early due to difficulty finding employment in the city where the rental unit is located and that upon securing a new job in another city she proceeded to find the replacement tenants for the landlord.

With respect to the carpet cleaning, the tenant submitted that the person she paid to clean the carpets actually cleans carpets in many rental units and is self-employed with his own carpet cleaning equipment. Unfortunately, the tenant's carpet cleaner forgot his invoice book and wrote a handwritten receipt which was presented to the caretaker performing the move-out inspection. It is the tenant's submission that the caretaker indicated that the receipt "would do" and the tenant had no indication carpet cleaning would become an issue later. Rather, the tenant submitted that since the move-out inspection was complete at 10:30 a.m. if the caretaker had indicated to her that there was an issue with the carpet cleaning or the receipt the tenant still had time to take action.

As evidence for the hearing, the landlord provided a copy of the tenancy agreement, the inspection reports, carpet cleaning invoice, advertisements and various correspondence between the parties including the cleaning checklist and move-out letter. The tenant provided a copy of a receipt issued by the carpet cleaner after the move-out inspection was completed and a copy of the carpet cleaner's business card, a copy of the inspection reports and evidence related to the tenant's new employment in a different city.

The landlord was asked if the caretaker was available to testify at the hearing; however, the caretaker was not available. Neither party provided a copy of the handwritten carpet cleaning receipt provided to the caretaker.

## Analysis

Upon review of the tenancy agreement, I find that the term of the tenancy was set to expire June 30, 2010 and that at the time the tenancy was formed the parties had agreed that the landlord would have the option to charge liquidated damages of \$400.00 if the “tenant ends the fixed term tenancy before the end of the Term...” The liquidated damages clause also states that the liquidated damages are not a penalty and are to cover the administration costs of re-renting the rental unit. Upon review of the tenant’s notice to end tenancy, I am satisfied the tenant ended the tenancy prior to the end of the fixed term.

Residential Tenancy Policy Guideline 4 speaks to clauses in tenancy agreements that provide for payment of liquidated damages. A liquidated damages clause is where both parties agree, in advance, that damages will be payable in the event of a breach of the tenancy agreement and that the amount is a genuine pre-estimate of the losses that will likely be incurred. The policy guideline further provides that unless a liquidated damages clause is found to be a penalty, if the liquidated damages clause is otherwise valid, then the clause must be upheld, even if the actual losses to the landlord were negligible or non-existent. A liquidated damages clause may be found to be a penalty clause where the sum is extravagant in comparison the greatest loss that could follow the breach.

Upon review of the liquidated damages clause and in consideration of the amount agreed upon by the parties and the landlord’s written submission of the tasks that must take place to re-rent a unit, I do not find the amount of the liquidated damages clause to be extravagant. I also accept that there are other costs associated to re-renting aside from advertising costs and that the landlord did likely incur costs associated to screening and administering the change in tenants. Therefore, I do not find the liquidated damages clause to be a penalty and that it is valid and enforceable. I award

the landlord \$400.00 for liquidated damages in accordance with the provision for such a charge under the tenancy agreement.

I have reviewed the move-out inspection report and I note that there is space provided on that report that states: "I have given the landlord a copy of the receipt for professional carpet and/or drapery cleaning" and there is space to indicate "yes" or "no". Upon review of the landlord's copy of the inspection report I find that "yes" or "no" is not indicated and that the caretaker completing the report did not make a comment about the presence or absence of a receipt. Upon review of the tenant's copy of the inspection report I note that the box that says "yes" is ticked. Clearly, the documents are not identical and given that it is easier to tick a box than untick a box, I find it more likely that the tenant altered the document after it was signed by the caretaker. Therefore, I have considered the landlord's version of the move-out inspection to reflect the actual move-out inspection report completed by the both the tenant and caretaker.

During the hearing, the landlord made the distinction between a carpet cleaning invoice and a carpet cleaning receipt and that it is an invoice rather than a receipt that is evidence of professional carpet cleaning. While I agree an invoice and a receipt may convey different information, the landlord's own communications to the tenant are not consistent and that the landlord's written correspondence indicates a carpet cleaning receipt is acceptable. To illustrate: the tenancy agreement requires a tenant to produce an invoice; however, the cleaning requirements checklist, the move-out letter, and the move-out inspection report, indicate the tenant is required to produce a carpet cleaning receipt. Therefore, I find the landlord has acted in such a way as to waive the requirement for an invoice and that receiving a receipt written by a professional carpet cleaner would dictate whether the tenant is required to pay the landlord for carpet cleaning costs.

The tenancy agreement does not define the word "professional" and I consider the ordinary meaning of the word in making this decision. The ordinary meaning of "professional" includes: following a business or occupation as a means of livelihood or

gain. The tenant submitted the carpet cleaner she used has a carpet cleaning business and she provided verbal testimony and business card as evidence of such. I accept that the person used by the tenant is in the business of carpet cleaning and meets the definition of a professional carpet cleaner. I do not find the landlord's requirement for professional carpet cleaning can be interpreted to mean only large or well known carpet cleaning companies.

With respect to the document provided to the caretaker as a "receipt" the tenant has submitted the caretaker indicated that the document "would do". The caretaker was not available to testify to confirm or deny such a statement; however, I note that the caretaker did not indicate on the move-out inspection report that a carpet cleaning receipt was absent or that a carpet cleaning charge would be made against the tenant. I find the absence of such information to be inconsistent with the notations that liquidated damages were discussed with the tenant and would be charged to the tenant. This inconsistency indicates to me that the tenant's statement that the caretaker indicated to the tenant that the "receipt" "would do" is more likely than not.

As the caretaker was acting as an agent on behalf of the landlord, I find the caretaker's communication to the tenant that the handwritten receipt "would do" prejudiced the tenant from taking further action to obtain a more formal receipt or evidence of professional carpet cleaning. Therefore, I find the landlord is not entitled to recover carpet cleaning costs from the tenant after indicating to the tenant that the tenant had fulfilled her carpet cleaning obligations.

In light of the above, I find that the landlord is not entitled to withhold \$218.61 from the tenant's security deposit for carpet cleaning. I order the parties to share in the cost of filing this application. The landlord is ordered to pay to the tenant 193.61 to the tenant forthwith and the tenant is provided a Monetary Order in the amount of \$193.61 to ensure payment is made.

### Conclusion

The landlord was partially successful in this claim has proven an entitlement to recover \$400.00 from the tenant. The landlord is Ordered to return the carpet cleaning deduction, less one-half of the filing fee, to the tenant forthwith. The tenant is provided a Monetary Order in the amount of \$193.61 to ensure payment is made.

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: May 05, 2010.

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Dispute Resolution Officer