

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the landlord and an application by the tenant.

The Landlord applied for dispute resolution on March 30, 2010 for;

- A Monetary Order for damage to the rental unit
- Order to retain the security deposit in partial satisfaction of the monetary claims.
- Recover filing fee - \$50.

The Tenant applied for dispute resolution on July 16, 2010 for:

- Return of the security deposit of \$1000
- Recover filing fee - \$50.

Both parties attended the conference call hearing and participated with their submissions, sworn testimony and document evidence, and were permitted to ask questions and attempt to settle all matters.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed ?

Is the tenant entitled to the monetary amounts claimed ?

Background and Evidence

The following is undisputed. The tenancy began on May 01, 2008. Rent was in the amount of \$2000 per month. At the outset of the tenancy the landlord collected a security deposit of \$1000, which the landlord still holds. There was a move- in inspection conducted by the parties and purportedly recorded by the landlord. The tenant vacated February 28, 2010. A move- out inspection was scheduled by the parties for the same day. The tenant called the day of the inspection and asked to reschedule

for a later time in the day. The landlord agreed to a later time, but not as late as the tenant requested. The parties met at the rental unit and made an attempt at an inspection. Emotions escalated and the parties did not complete the inspection. The landlord claims they later conducted an inspection but did not provide the results to this hearing. The parties did not arrive to an agreement as to the administration of the security deposit.

The landlord claims that on the last day of the tenancy and of the inspection the rental unit was not clean and contained refuse and items requiring disposal. The landlord claims the 6 year old living room carpet was found to have a 8" x 6" patch, in the middle of the room, which appeared to have been damaged by scorching. The landlord claims it was not there at the outset of the tenancy and the inspection report does not identify any damage to the living room carpet. The tenant testified it was present at the outset. Neither party provided a copy of the move-in inspection document. The landlord claims he has it, but that the tenant never signed it. The landlord claims the outdoor property of the tenancy, for which the tenant was responsible was unkempt and required general yard maintenance and grass cutting. The landlord claims damages for:

Yard maintenance, garbage removal and general cleaning of the unit - \$400

Mitigated cost (50%) for replacement of the claimed damaged carpet - \$1340

The landlord provided document evidence of photographs, invoices and the tenancy agreement in support of their claim.

The tenant testified that she is responsible and agreeable to costs of \$400 for the yard maintenance, garbage removal and general cleaning of the unit as this was not done. However, the tenant in no way thinks they are responsible for the landlord's claim for replacement of the carpet.

Analysis

I have considered all evidence, all submissions to both claims and have considered all testimony given in the hearing.

The degree of contrast in the evidence is apparent. None the less, in this matter the onus is on the landlord to prove their claim. I find the landlord has not proven their claim for carpet replacement, and **I dismiss** this part of their claim without leave to reapply.

On the basis of the evidence and testimony of both parties I find the landlord has sufficiently substantiated their claim for damages of \$400 for yard maintenance,

garbage removal and general cleaning of the unit. The landlord is entitled to their claim of **\$400** in this regard.

As the landlord currently holds the tenant's security deposit in an amount greater than what the tenant owes the landlord, it is appropriate that I order the balance of the security deposit with any accrued interest to be returned to the tenant.

As both parties were partially successful in their applications I grant both parties partial recovery of their filing fee, which effectively renders the award of filing fees moot.

Therefore, as to the Monetary Order:

Calculation for Monetary Order

| | |
|-----------------------------------|-----------------|
| Security deposit held by landlord | \$1000.00 |
| Accrued interest | \$11.11 |
| Landlord's entitlement | -400.00 |
| Landlord owes tenant | \$611.11 |

Conclusion

I order that the landlord retain \$400 of the security deposit and interest of \$1011.11 in satisfaction of the claim and return the balance of \$611.11 to the tenant, forthwith.

I grant the tenant a Monetary Order under Section 67 of the Act for the balance of **\$611.11**. If necessary, 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*.