

DECISION

Dispute Codes MNSD, MND, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenants application is a request for a monetary order totalling \$1320.00 and request that the respondent/landlord bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

The landlords application is a request for a monetary order of \$2022.06, a request that they be allowed to retain the full security deposit as well, and a request that the respondent/tenant bear the \$50 cost of the filing fee that they paid for their application for dispute resolution.

Background and Evidence

The tenant testified that:

- The landlord has not returned the security deposit, and the time limit in which to return the deposit or file dispute resolution as past.
- He personally handed the landlord a forwarding address in writing on February 28, 2010 when he handed over the keys.
- He also gave the landlord an extra key fob that he had purchased for the building and the landlord told him he would send them \$20 for the cost of the key fob.
- The carpets were stained when they moved in, however when they moved out they had the carpets professionally cleaned approximately 3 weeks prior.
- They also thoroughly cleaned the remainder of the rental unit and when the keys were turned over to the landlord the landlord chose to not do a move-out inspection and told the tenant everything looked fine.

The tenant is therefore requesting a claim as follows:

Return of security deposit	\$650.00
Penalty for failing to return security deposit within the time limit required under the Residential Tenancy Act	\$650.00
Key fob	\$20.00
Filing fee	\$50.00
Total	\$1370.00

The landlord testified that:

- The tenant did not give him a forwarding address on the 28th of February, and in fact he did not receive a forwarding address until March 3, 2010 and therefore since he apply for dispute resolution on March 16, 2010, he was within the 15 day time limit.
- The tenant left the carpets in the rental unit badly damaged with urine stains and as a result the carpets needed to be replaced at a cost of \$2359.56.
- The carpets were approximately 10 years old but were not urine stained when the tenant moved in.

- They also had to spend 8 hours scraping the urine/underlay residue from the concrete floor.
- He did not do a move-out inspection because the carpets were still wet any did not want to walk on them however once he was able to gain access to the unit he then discovered how bad the carpets were.
- The kitchen also required 2 hours of cleaning the bathroom required 1/2 an hour of cleaning.

The landlord is therefore requesting an order as follows:

Cost to replace carpet	\$2359.56
Two hours cleaning kitchen	\$50.00
One half hour cleaning bathroom	\$12.50
Eight hours scrubbing and scraping concrete floor	\$200.00
Filing fee	\$50.00
Total	\$2672.06

The landlords therefore requests that they be allowed to keep the full security deposit of \$650.00, and then a monetary order be issued for the remaining \$2022.06.

Analysis

The tenant has not met the burden of proving that he gave the landlord a forwarding address in writing on February the 28th 2010. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

The landlord has admitted to receiving a forwarding address in writing by March 3, 2010, and therefore it is my finding that the landlord did apply within the time limit therefore the security deposit will not be ordered returned double.

I also will not allow the tenants claim for the key fob, as it is my finding that this claim does not arise from the tenancy and if the landlord did agree to pay for the key fob that was a separate agreement. I therefore have no jurisdiction over this matter.

I will however order that the security deposit be returned to the tenant because it is my decision that the landlord has not established a claim against the tenant.

First of all I am not convinced that the damage to the carpet was entirely caused by the tenants, if at all. No move in inspection report was produced, and therefore it's difficult to tell what condition the carpets were in at the beginning of a tenancy. The landlord has supplied a witness letter from a previous tenant, and although it states they had no pets, it does not state whether or not the carpets were stained prior to their tenancy.

Further even if the carpets were damaged by this tenant, one must take into consideration normal depreciation. Carpets have a life expectancy of approximately 10 years, and since these carpets were 10 years old they are considered to be completely depreciated and of no value.

I therefore will not allow the landlords claim for replacing the carpets.

I also deny the claim for cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

Conclusion

The landlords claim is dismissed in full with leave to reapply.

I have allowed \$650.00 of the tenants claim, and I further order that the landlord bear the \$50.00 cost of the filing fee paid by the tenant.

Total order issued in favour of the tenant \$700.00.

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: July 12, 2010.

Dispute Resolution Officer