

DECISION

Dispute Codes MNSD MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep all or part of the security deposit, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail April 16, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on April 21, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one attended on behalf of the Tenant despite the Tenant being served notice of today's hearing in accordance with the *Act*.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began on December 1, 2009 for the monthly rent of \$1,200.00. The tenancy ended on March 31, 2010 after the Tenant provided the Landlord with written notice to end tenancy. The Tenant paid a security deposit of \$600.00 on October 30, 2009.

The Landlord testified and referred to her documentary evidence which included among other things, a copy of the tenancy agreement, a copy of the move-in and move-out inspection reports, and copies of invoices for work completed at the rental unit.

The Landlord advised the Tenant attended the move out inspection appointment on March 31, 2010, but that she left before the inspection was completed and did not sign the report. The Tenant vacated the rental unit without cleaning the unit and did not return the keys for the unit to the Landlord.

The Landlord is seeking compensation as follows:

- 1) \$94.50 for carpet cleaning in accordance with # 4 of the tenancy agreement which states "The Tenant shall be responsible for the cost of ... and *professional cleaning* of the carpets upon vacating the suite." The carpets were not cleaned as supported by the move-out inspection report.
- 2) Cleaning of the rental unit \$240.00. The Tenant failed to clean the rental unit so the Landlord entered into an agreement with the incoming tenant to clean the unit. The Landlord argued the new tenant was taking possession of the unit April 1, 2010, and had agreed to clean the unit. The Landlord provided a receipt which confirms the unit required 16 hours of cleaning at \$15.00 per hour.
- 3) Repair and cleanout of the central vacuum system \$115.50. The Landlord was advised by the incoming tenant on April 12, 2010 that the central vacuum system was not working. There was no mention of the vacuum not working during or at the end of the Tenant's tenancy. During the repair it was determined that the vacuum system was plugged with rocks and screws which the Landlord noted on the move-out inspection after the report was initially completed. The Landlord confirmed she had no knowledge of the vacuum issue until April 12, 2010.
- 4) Locksmith charges to re-key the rental unit \$91.56. The Tenant failed to return the keys to the Landlord and with a new tenant moving in the Landlord stated she had to have the locks re-keyed as supported by the invoice provided in evidence.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Landlord was required to pay \$94.50 to have the carpets steam cleaned. Section 4 of the tenancy agreement provides that the Tenant was required to have the carpets professionally cleaned. Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean. Based on the aforementioned I find the Landlord has proven the test for damage or loss as listed above and I approve their claim for \$94.50.

As mentioned above, Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean. The evidence supports the Tenant failed to clean the unit which caused the Landlord to suffer a loss of \$240.00 for

cleaning. Therefore I find the Landlord has proven the test for damage or loss and I award them \$240.00 in cleaning costs.

The Landlord is seeking \$115.50 to clean and repair the plugged central vacuum system. The evidence supports the Landlord was not informed of this issue until April 12, 2010, twelve days after the new tenant occupied the unit and had full use and access to the vacuum system. There is insufficient evidence before me to prove the vacuum was plugged during the Tenant's tenancy and therefore I dismiss the Landlord's request for \$115.50 against this Tenant.

The testimony supports the Tenant failed to return the rental unit keys to the Landlord in violation of Section 37 of the Act which states when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant. The Tenant also violated section 14 of the tenancy agreement which caused the Landlord to suffer a loss of \$91.56, as supported by the evidence. Based on the aforementioned I find the Landlord has proven the test for damage or loss and I approve their claim in the amount of \$91.56.

The Landlord has primarily been successful; therefore I award the Landlord recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Carpet cleaning	\$94.50
Cleaning of rental unit	240.00
Re-keying the locks	91.56
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$476.06
Less Security Deposit of \$600.00 plus interest of \$0.00	- 600.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$123.94

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$123.94**. The order must be served on the Landlord and is enforceable through the Provincial Court 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: August 26, 2010.

Dispute Resolution Officer