



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

At the outset of the hearing the landlord acknowledged that the matter of the retention of the security deposit was dealt with through a previous dispute resolution decision, dated April 8, 2010. As a result, the landlord's application is amended to exclude this matter

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for liquidated damages; for carpet cleaning charges and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy ended March 31, 2010 resulted from the tenant's notice to end tenancy that was received by the landlord on March 18, 2010. Prior to this date the landlord had also applied, through the Direct Request process, for an order of possession and a monetary order for unpaid rent for the month of March 2010.

The landlord seeks to enforce the liquidated damages clause in the tenancy agreement that states:

"If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may, at the landlords option, treat this agreement as being at an end. In such event, the sum of \$250.00 shall be paid by the tenant to the landlord as liquidated damages, and not as penalty, to cover the administration costs of re-renting the said premises."

The tenancy agreement notes the "(B) above" in the above clause stipulates that the fixed term ended on the 31 day of July, 2009.

The landlord claims also for compensation in the amount of \$84.00 for professional carpet cleaning as noted in Clause #38 of the addendum to the tenancy agreement that stipulates "upon move out all carpets to be professionally cleaned and paid for by tenant. Receipt to be provided to the landlord."

The tenant confirmed in her testimony that she did not have the carpets professionally cleaned at the end of the tenancy. The tenant also noted that the rental unit was in better condition when the tenancy ended than when it began.

The landlord did not submit a receipt for carpet cleaning but noted that they had the carpets deep steam cleaned by their usual carpet cleaning for a job that takes usually 45 minutes to an hour to complete and is based on the size of the rental unit.

Analysis

I find, in order to enforce the liquidated damages clause of the tenancy agreement, the tenancy must have ended by the date noted as the end of the fixed term tenancy in the tenancy agreement or July 31, 2009. As the tenancy ended on March 31, 2010, I find the landlord is not entitled to this amount of their claim.

In order to be successful in a claim for damage or loss under the *Act*, regulation or tenancy agreement the applicant must show:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. Evidence that establishes the value of the loss or damage; and
4. The steps taken by the applicant to mitigate any loss or damage.

As the landlord has failed to submit any receipts for carpet cleaning they have failed to establish that any loss or damage exists or the value of that loss or damage.

Conclusion

Based on the above, I dismiss the landlord's application in its entirety.

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: September 15, 2010.

Dispute Resolution Officer