



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the rental unit, for compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on July 1, 2008, with the parties entering into a written tenancy agreement. The monthly rent was set at \$1,100.00, payable on the first day of the month, and the Tenant paid the Landlord a security deposit of \$550.00 on June 13, 2008.

On March 18, 2010, the Landlord received a Notice to End Tenancy from the Tenant, which was to be effective on April 30, 2010.

The Tenant vacated the property prior to the end of April, on or about April 15, 2010. The Landlord acknowledged receipt of the Tenant's forwarding address on April 14, 2010. In the same written correspondence, the Tenant also informed the Landlord they could keep the cost of carpet cleaning from the security deposit.

The Landlord and Tenant exchanged several emails about the scheduling of the outgoing condition inspection report. The Landlord eventually posted a Notice on the

door of the rental unit, dated April 27, 2010, that the move out inspection would occur on April 29, 2010. I note this Notice was not in the approved form, as required under section 17 in the regulation to the Act.

The parties had also discussed the cleaning of a clogged drain in the rental unit. The Tenant had indicated she wanted to try and clean this herself. The Agent for the Landlord informed the Tenant that a professional had already been hired for this.

The Landlord performed the outgoing condition inspection report without the Tenant. On or about May 10, 2010, the Landlord sent the Tenant a "record of security deposit", setting out that the Landlord was charging the Tenant as follows:

a.	Cleaning	400.00
c.	Clear clogged drain	118.13
d.	Light bulb replacement	61.32
e.	Holes patching in wall	140.00

The Landlord deducted the cost of the above from the security deposit and interest held of \$554.55, and informed the Tenant that she owed the \$254.15 balance to the Landlord.

On May 26, 2010, the Landlord filed this Application, claiming for the above noted costs and to recover the filing fee for the Application. In support of the claims the Landlord provided several invoices.

The Agent testified that she believed the hourly rate for the cleaning was \$85.00, although no breakdown was provided in the invoice. The Agent further testified that the Landlord hired a professional to change two light bulbs. The Agent also testified that the Tenant was responsible for the logged drain, as it was clogged by hair.

The Tenant's evidence was that she co-operated with the Landlord and was surprised they Landlord informed her of the outgoing condition inspection report by posting the Notice on the door. The Tenant felt she was not given an opportunity to unclog the drain herself. The Tenant also testified that the Agent for the Landlord could have handled the outgoing condition inspection report better, and pointed out that the Landlord had not applied to keep the security deposit within 15 days of the end of the tenancy, as required under section 38 of the Act.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find that the Landlord has established claims for a portion of the items described above. I find the Tenant did not clean the carpet or unclog the drains in the unit and this has caused losses to the Landlord.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord in this case to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

While the Landlord had some evidence that the rental unit was not completely cleaned at the end of the tenancy, I find the Landlord had insufficient evidence to establish the actual amount required for cleaning the unit and that this amount had been mitigated by using a cost effective method. Here the Landlord's evidence did not breakdown what required cleaning in the unit, nor did it set out the time to clean the unit. The testimony was that the cleaning cost \$85.00 per hour, however, this did not explain how many cleaners were billed at this rate or how long they took. Likewise, there was insufficient evidence on why the light bulbs had to be changed by a professional, or what the alleged damage to the walls was.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant admitted the carpets had not been cleaned, which was required under the tenancy agreement, and the invoice for the clogged drain indicates it was hair clogging it, which should have been cleaned out by the Tenant. I find the Tenant had time to

clean the drain, yet never did. Therefore, I allow the Landlord **\$207.38** for these claims. I allow the Landlord \$20.00 for the return of the filing fee for the Application which reflects the partial success achieved, and find the Landlord has established a total monetary claim of **\$227.38**, subject to the set off described below.

As the Landlord did not comply with section 38 of the Act, which here required the claim to be filed within the 15 days from the end of the tenancy, section 38(6) requires the Landlord to repay the Tenant double the security deposit held, plus the applicable interest. I find the security deposit due to the Tenant is **\$1,104.55**, comprised of double the \$550.00, plus \$4.55 in interest.

The Landlord may retain \$227.38 from the \$1,104.55, and must return the balance of **\$877.17** to the Tenant. Pursuant to the policy guideline, I have provided the Tenant with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) 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*.

Dated: October 08, 2010.

Dispute Resolution Officer