

DECISION

Dispute codes MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit and pet damage deposit in partial satisfaction of the claim. The landlord has also requested recovery of the \$50.00 filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issues

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Summary of Background and Evidence

This tenancy began on April 1, 2009 and was originally between the tenants and the previous owners of the residential property, X and Y. The rent was \$1,050.00 per month. A security deposit of \$525.00 was paid at the start of the tenancy. A move-in condition inspection report was not conducted. In September 2009 the current landlord, Q, purchased and took possession of the property. The tenants gave notice to end the tenancy in March 2010 and vacated the rental unit on April 30, 2010.

Mr. Q testified that after he received the tenant's notice to end tenancy at the end of March, he sent the tenants a letter indicating that he wished to do an inspection of the rental unit with them upon move-out but that he never received any response. Mr. Q testified that the tenant failed to properly clean the rental unit upon move out and that there was a strong odour of pet urine in the unit. Photos were submitted by the landlord in support of his claim. The landlord also submitted statements from JM who replaced the carpets and the previous landlords both of whom say the unit smelled badly and that the carpets were particularly dirty.

For their part, the tenants strongly deny that the unit was left dirty or that it smelled of pet odour. The tenants provided four statements from witnesses who say the unit was

clean and did not smell as well as photos showing the rental unit after they had finished cleaning. The tenants submitted that in any event the landlord's right to claim against the security deposit has been extinguished under Section 24 of the Act due to the lack of a move-in condition inspection report.

Analysis

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In the present case, the landlord claims the tenant did not fulfill this requirement and that it cost him \$525.00 to clean and repair the unit.

As a general principle, when making a claim of this nature, the party making the claim bears the burden of proof on a balance of probabilities both as to liability and quantum. In other words, the claimant must first prove that the respondent is liable for the damage and then, having proved that, must then prove the cost of repairing the damage.

In the present case the testimony and evidence of the parties is contradictory both as to the original and final condition of the rental unit and in the absence of a move-in condition inspection report it is impossible for me to determine whether any or all of the damage or dirt is the responsibility of the tenants. As a result, based on the evidence before me, I am unable to find, on balance, that the landlord has proved the tenants' liability for the claim.

It is unnecessary for me to deal with the question of whether the landlord's right to claim against the security deposit was extinguished.

Conclusion

Based on the above I hereby dismiss the landlord's claims and order the landlord to return the security deposit in the amount of \$525.00 to the tenants forthwith. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I dismiss the landlord's request to recover the filing fee from the tenant.

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*.