DECISION

Dispute Codes   MND, MNSD, MNDC, FF

Introduction

This is a cross application where the Landlord is seeking a monetary order for damage
to the unit, to keep all or part of the security deposit and for money owed or
compensation for damage or loss under the Act, regulation or tenancy agreement and
the recovery of the filing fee. The Tenant has filed an application for the return of part of
the security deposit and recovery of the filing fee.
Both parties attended by conference call and gave affirmed testimony.

Issues(s) to be Decided

Is the Landlord entitled to a monetary order for damage or loss under the Act, regulation
or tenancy agreement?
Is the Tenant entitled to a monetary order for the return of the security deposit?

Background and Evidence

This Tenancy began on January 1, 2010 on a fixed term tenancy for 5 months until May
31, 2010. The monthly rent was $900.00 payable on the 1st of each month and a
security deposit of $412.50 was previously received in November of 2007. The
Landlord's retained $162.50 from the security deposit at the end of the tenancy with the
Tenant's consent.
The Tenant states that at the end of tenancy on May 31, 2010 the Landlord visually
inspected the rental unit that the two parties agreed that only $250.00 would be returned
to the Tenant given the state of the rental unit. At the beginning of June 2010, within

the first 6 days, the Landlord placed a stop payment on the $250.00 security deposit cheque to the Tenant.

The Landlord has submitted an expense list consisting of paint for $282.64, paint brushes for $16.50, labour cost for a painter for $748.00, a drilling auger to make repairs to a damaged bi-fold door for $21.26, $2.19 for a sliding glide for the damaged bi-fold door, new kitchen tap for $96.31, a new curtain rail for $44.80, Premix wall filler for $5.59, a new blind for the main bedroom for $58.21, $50.00 to replace a visitor parking pass which was not returned, the RTB application fee and $11.16 for the cost associated to posting the application by registered mail. The total cost being sought by the Landlord equals $974.16. The Landlord has provided an email letter from a prospective Tenant that had reconsidered their lease agreement as they specified deficiencies primarily with cleaning. This email letter dated June 2, 2010 notes that the carpet needs steam cleaning, a was seal on the toilet needs to be replaced, all of the cupboards need cleaning especially around the stove, an odour was detected through out the rental unit, a closet shelf was not attached properly, the washing machine lid was not opening properly, there was a damaged handle on the screen door and that the hard wood floors were satisfactory, but displayed general wear and tear with various scratches and scuffs.

Analysis

The Landlord has not provided any documented proof of receipts or invoices for costs associated to their loss. The Landlord has neither provided any proof in the form of photographs or any documentation from any 3rd party witnesses to support their claim. The only evidence to support their claim is the email letter by the prospective tenants that withdrew due to reconsidering their lease agreement. This prospective tenant statement refers primarily to the unsatisfactory state of cleanliness of the rental unit. The Tenant has disputed the Landlord's claims of damages and I find the Tenant's evidence credible.

Section 36 (1) The right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if (a) the landlord complied with section 35 (2) {2 opportunities for inspection}, and (b) the tenant has not participated on either occasion. (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (a) does not comply with section 35 (2), (b) having complied with section 35 (2), does not participate on either occasion, or (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord has failed to comply with the Act's condition inspection report requirements. I find without supporting evidence that the Landlord has failed to establish their claim, except that of cleaning costs that the Landlord has not applied for. The Landlord's application is dismissed.

The forwarding address of the Tenant was known at the end of tenancy and the Tenant has made the request for the return of it.

Section 38 (1) Except as provided in subsection (3) (4) (a), within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) If a landlord does not comply with subsection (1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Tenant's application is therefore granted. The Tenant is entitled to double the remaining security deposit of $250.00 equalling $500.00. The Tenant is entitled to the recovery of the filing fee of $50.00. I grant the Tenant an order under section 67 for the balance of $550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for $550.00.

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: November 26, 2010.

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Dispute Resolution Officer