



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord has requested orders for monetary compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The Tenant has requested monetary orders for compensation under the Act or tenancy agreement, for return of the security deposit, 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Is the Tenant entitled to the monetary compensation sought?

Background and Evidence

This tenancy began on September 9, 2009, for a fixed term of one year, and ended on August 31, 2010, monthly rent was \$1,150.00 for a single occupancy and a security deposit of \$575.00 was paid prior to the beginning of the tenancy. The rental unit was furnished.

The Landlord's Claim and Evidence

The Landlord is seeking a monetary order for \$2,484.06 for the following:

1. Advertisement of the rental unit, \$26.20
2. 1/3 of the hydro bill for the length of the tenancy, \$368.17
3. Damaged carpet, \$1,450.90
4. Landlord's cost of cleaning the rental unit, \$20.00
5. Cleaning of a 3 seat sofa and love seat, \$296.80
6. Clean of 2 mattresses, \$271.99
7. The filing fee--\$50.00

The Landlord has submitted evidence including the Application for Tenancy and the Tenancy Agreement, a heavily notated Condition Inspection Report, a hydro printout of account, statements from a carpet cleaning company regarding quotes and cleaning of a sofa, loveseat and mattresses, a work order and letter from that same company regarding the carpet, a quote from a carpet company for carpet replacement, a statement of costs for the advertisement, and an inventory of the suite.

The Landlord testified that the Tenant ended the tenancy early by giving notice in mid August for an August 31, 2010 move out date. The Landlord stated that she immediately listed the rental unit for rent the day the notice was received, August 17, but that she did not receive any applications from suitable prospective tenants. The Landlord stated that she had missed out on advertising for her target market, that being college students.

The Landlord stated that she never submitted the Tenant a hydro bill, but that the bill was owed pursuant to the tenancy agreement.

As to the carpet, the Landlord testified a replacement was necessary as there were several holes and a large tear, in the traffic area.

The Landlord testified that after each tenancy, she has the same company clean the carpet, mattresses, sofa and loveseat, as they keep a record of the condition of the carpet. The Landlord further stated that cleaning the mattresses and furniture was necessary to maintain health standards for each new tenant and that each tenant was told these items had to be cleaned at the end of the tenancy.

The Landlord admitted that the Tenant had a carpet cleaning company clean the carpet at the end of the tenancy, but that the company did substandard work and was not BBB approved.

The Landlord testified that there was a move in inspection prior to the tenancy, but that her copy had gone missing. The Landlord's submitted condition inspection report was based on her recollection and the suite inventory. I note that the report was heavily notated and not signed by the Tenant.

The Tenant's Claim and Evidence

The Tenant is seeking a monetary order for \$725.00 for the following:

1. Return of the Security Deposit, \$575.00
2. Overcharge for September rent
3. The filing fee--\$50.00

The Tenant has submitted evidence of a complete tenancy agreement, a receipt from a carpet cleaning company, a series of emails between the Tenant and the Landlord mentioning, among other things, cleaning of the rental unit, move out date, inspection dates, and discussions of the September rent due to late notice.

The Tenant testified that the carpet was not damaged, that it was in good condition when she left, that she had the carpet professionally cleaned as required and that she was not responsible for cleaning the sofa, loveseat and mattresses as it was not required in the tenancy agreement.

The Tenant stated there was no move in inspection done or her signature would have been on the document, she never received a copy of the inspection report and that she made notes on the suite inventory at the end of the tenancy so that she would not be said to be responsible for missing items. The Tenant denied this was part of the move out inspection.

The Tenant stated that she attempted to pay the September 2010 rent for late notice in the amount of \$1,150.00, but that the Landlord would not accept this and pressured her into paying \$1,250.00 for that month, which she did.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Landlord's Application:

Section 23(4) of the *Act* requires a landlord to complete a condition inspection report in accordance with the regulations at the start of the tenancy. Section 24(2) of the *Act* extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to complete the report.

Section 35 (3) and (4) of the *Act* requires a landlord complete a condition inspection report in accordance with the regulations and give the tenant a copy of that report in accordance with the regulations. A failure of this requirement results in the application of section 36(c), which extinguishes the right of a landlord to claim against the deposit for damages.

I have no evidence before me that the Landlord has properly completed the inspection report both upon move in and move out. The move in inspection report was completed by the Landlord based upon recollection and was not the original report. The Tenant denied performing a move in inspection.

Therefore I find that the right of the Landlord to claim against the deposit for damages is extinguished. However, the Landlord is still entitled to claim for damages allegedly caused by the Tenant.

Advertisement of the rental unit –I find that the Landlord placed an advertisement for the rental unit for September after receiving the Tenant's notice to end of the tenancy early. However, ultimately the Tenant paid the September rent and I consider the advertising costs a normal cost of doing business and was not a loss under the *Act*. I therefore **dismiss** her claim in the amount of **\$26.20**.

1/3 of the hydro bill for the length of the tenancy - The Landlord never submitted a hydro bill to the Tenant during the course of the tenancy, thus she never made written demand for payment as required under sec. 46 (6). I find the Landlord in this case failed to mitigate her damages by making timely submission of the hydro bill and I hereby **dismiss** her claim in the amount of **\$368.17**.

Damaged carpet- There was contradictory testimony regarding the condition of the carpet, with the Landlord stating there was damage caused by the Tenant and the Tenant stating the carpet was in good condition. Without an incoming condition inspection report it is up to the Landlord to establish the condition of the rental unit at the time the Tenant moved in.

Without this properly completed report and photographic proof, I find the Landlord has submitted insufficient documentary evidence necessary to establish the condition of the carpet both before and after this tenancy. I also take into consideration the Landlord's statement that the damage was in a high traffic area, which could very well be the reason for any alleged damage as this was a primarily student rental with a high turnover. Additionally, the written quote offered by the Landlord stated that the carpet was fraying, which would indicate normal wear and tear. I find the work order of the carpet cleaning company does not replace a move in inspection report upon which a Tenant can make comments. Based on a lack of evidence, I find that the Landlord has not proven the test for damage and loss and I hereby **dismiss** her claim in the amount of **\$1,450.90**.

Landlord's cost of cleaning the rental unit- The Landlord did not submit documentary proof of actual damage or loss and therefore I find that the Landlord has not proven the test for damage and loss and I hereby **dismiss** her claim in the amount of **\$20.00**.

Cleaning of a 3 seat sofa and love seat- The Tenant is not required under the Act or agreement to clean furniture. Therefore I find that the Landlord has not proven the test for damage and loss and I hereby **dismiss** her claim in the amount of **\$296.80**.

Clean of 2 mattresses- The Tenant is not required under the Act or agreement to clean mattresses. Therefore I find that the Landlord has not proven the test for damage and loss and I hereby **dismiss** her claim in the amount of **\$271.99**.

Based on the above, I dismiss the entire claim of the Landlord and thus decline to award the filing fee.

Tenant's Application:

Return of the Security Deposit- As described above, the Landlord is precluded from claiming against the security deposit of the Tenant by section 24 of the Act and now by virtue of my dismissal of her claim. I therefore order the Landlord to return the security deposit of **\$575.00** to the Tenant.

Overcharge of September rent--The Tenant's monthly rent was \$1,150.00 pursuant to the tenancy agreement, yet she charged the Tenant \$1,250.00 for September. I therefore find the Landlord contravened the agreement and Act and overcharged the Tenant for the month of September. I find the Tenant has proven the test for loss or damage under the Act and I **grant** the Tenant the amount of **\$100.00**.

Filing fee-I find the Tenant was successful with her Application and as such I award her the filing fee of **\$50.00**.

I find the Tenant established a monetary claim for **\$725.00**, comprised of the security deposit of \$575.00, \$100.00 for overcharged rent and the \$50.00 filing fee.

Pursuant to Section 67 of the Act, the Tenant is hereby granted a monetary Order in the amount of **\$725.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's claims in her Application are dismissed.

The Tenant is granted a monetary Order for \$725.00.

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: December 10, 2010.

Dispute Resolution Officer