

Decision

Dispute Codes:

MNSD

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for unpaid rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act. The landlord appeared and gave testimony.

Despite being served by registered mail, the tenant did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order and to retain the pet-damage deposit for cost of cleaning and carpet cleaning in the amount of \$936.60.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination depends on answers to the following questions:
 - Has the landlord submitted proof that the specific amount of rent being claimed is owed by the tenant to this landlord?
 - Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

Background and Evidence

The landlord testified that the tenancy began in August 2008 and ended around September 2010 when the landlord obtained an Order of Possession. The landlord submitted into evidence a copy of a tenancy agreement with showing the rent as \$1,075.00 per month. The agreement appeared to indicate that the security deposit paid was \$537.50 and pet damage deposit of \$537.50.

At the previous hearing the landlord was granted an order allowing the landlord to keep the security deposit in partial satisfaction of rental arrears owed. However, the pet damage deposit was not dealt with and the landlord is now seeking to retain it to cover the \$672.00 charges for cleaning and paint preparation and \$264.60 in carpet-cleaning costs. Invoices dated September 16, 2010 and September 17, 2010 were in evidence.

The landlord testified that a move-in inspection was done and a move-out inspection was also conducted without the tenant's participation. However no copies of these documents were in evidence.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to the claim for cleaning costs in the amount of \$672.00, I find that this claim does not sufficiently meet element 2 of the test for damages. While there is proof that the landlord did incur the expenditures as stated, I find that the failure to provide copies of the completed, and mutually signed, move-in and move-out inspection reports makes it difficult to determine the comparative before and after condition of this unit in order to prove that the tenant was solely responsible for the damages and cost.

Accordingly, I find that this portion of the landlord's claim must be dismissed.

That being said, I accept that the carpets were likely, on a balance of probabilities, in a reasonably clean condition at the start of the tenancy and were then left in a state that required cleaning at the end of the tenancy. Therefore I find that the landlord is entitled to \$264.60 for the carpet cleaning charges.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to retain \$264.60 from the pet damage deposit of \$537.50 leaving a balance of \$272.90 as a credit in favour of the tenant. The remainder of the landlord's application is dismissed without leave.

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: January 2011.

Residential Tenancy Branch