



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for money owed or compensation for damage or loss under the Act.

The Landlord and Tenant CL appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

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 a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that this tenancy began on November 15, 2000, and ended on August 31, 2010. Rent was \$450.00 per month. A security deposit of \$140.00 was paid by Tenant AF on October 24, 1984, and this security deposit was transferred to this rental unit as security deposit, plus an additional \$85.00, totalling \$225.00 on December 1, 2000.

The Landlord's relevant evidence included a tenancy agreement, an Incoming Inspection Report, a statement and invoice from a painting company and photos of interior walls.

In support of his claim for \$863.99 for carpet and interior wall damage to the rental unit, the Landlord testified that at the conclusion of the ten year tenancy, he had to have the walls sealed and repainted due to Tenant AF's smoking and the carpet repaired from

cigarette burn marks. Upon query, the Landlord admitted that there was no clause in the tenancy agreement prohibiting smoking.

After questioning of the Landlord, the Tenant did not believe her or her witness' testimony was necessary.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has 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. In this case, the onus is on the Landlord to prove damage or loss.

The obligation of the Landlord is to provide opportunities for a move out condition inspection. Without evidence or testimony of an inspection of the rental unit, I find the Landlord has not established the condition of the rental unit after this tenancy.

Further RTB Guidelines 37 provides a useful life of carpets to be 10 years and that of interior walls to be 4 years. As a result I find that the carpet and interior walls were fully depreciated.

Therefore I find that the Landlord has **not** proven or established a monetary claim for the alleged damages to the rental unit and I **dismiss** the Landlord's Application without leave to reapply.

I find the Tenants are entitled to a monetary order as follows:



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Security Deposit	\$225.00
Interest on Security Deposit of \$140.00 from 24 October 1984 Until 1 December 2000	\$143.82
Interest on Security Deposit of \$225.00 from 01 December 2000 until 31 August 2010	\$15.36
Total	\$384.18

I **direct** the Landlord return the Tenants' security deposit and interest in the amount of \$384.18. Under authority of Section 67 of the Act, I also grant the Tenants a monetary **Order** in the amount of **\$384.18**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed.

The Tenants are granted a monetary Order in the amount of **\$384.18**.

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 06, 2011.

Residential Tenancy Branch