



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order to keep part of the security deposit and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to keep part of the security deposit?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. The property manager, B.R, testified that pursuant to a written agreement, the month to month tenancy started on February 1st, 2009 and ended on September 30th, 2010. The monthly rent of \$900.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$450.00.

B.R. stated that a move-in condition inspection report was not completed at the start of the tenancy. He stated that in the tenant's absence, he completed and left a move-out condition inspection report on the table at the end of the tenancy.

B.R.'s documentary submissions included a copy of an invoice of \$98.56 for carpet cleaning; a copy of an invoice of \$200.00 for cleaning the unit, and a statement of account for the return of the balance of the tenant's \$450.00 security deposit for the balance of \$151.44. There were no documentary submissions regarding the rental agreement or the move-out condition inspection report.

The tenant testified that she left the unit in cleaner condition than when she moved in; she stated that there were pre-existing carpet stains and that although she did not hire professional cleaners, she used her mother's steam cleaner and cleaned the carpets twice. She also stated that she cleaned all the cupboards with bleach and water. Concerning the condition inspection report left on the table, she asserted that she never found that report, and that the move-in condition inspection was left for her to complete.

Analysis

In order to claim for damage or loss under the Act or the tenancy agreement, the party making the claim bears the burden of proof. In this matter, the landlord must prove the existence of damage or loss, and that it stemmed directly from the tenant's violation of the tenancy agreement or the *Residential Tenancy Act*.

Section 23(3), (4) and (5) of the Act places the onus to complete condition inspection reports on the landlord. The landlord's claim was not supported by these reports. The tenant testified that she cleaned the unit and showed diligence regarding the carpets. In the absence of substantive, independent evidence, there is insufficient evidence to support the claim that the damage or loss claimed by the landlord resulted in damage or loss beyond reasonable wear and tear.

Based on the available evidence and testimony of the parties, I find that the landlord is not entitled to retain the balance of the tenant's security deposit and the landlord's application is dismissed.

Conclusion

Pursuant to Section 67 of the Act, I order the landlord to return the balance of the security deposit to the tenant in the amount of \$151.44.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

Since the claim is dismissed, the landlord is not entitled to recover the filing fee.

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: February 22, 2011.

Residential Tenancy Branch