



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution. The landlord applied for a Monetary Order for damage to the unit; to keep all or part of the security deposit; and to recover the filing fee for his application. The tenant applied for a Monetary Order for the return of the security deposit and to recover the filing fee for her application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?

Is the tenant entitled to a Monetary Order?

Background and Evidence

The rental unit consists of a two bedroom condominium in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on April 15, 2010 and ended August 31st, 2010. The monthly rent of \$950.00 was payable on the first of each month. The tenant paid a security and pet damage deposit of \$475.00 respectively, for a combined amount of \$950.00. Condition inspection reports were included as part of the landlord's evidence.

Regarding the landlord's application; he testified that the tenant gave an inadequate notice to end the tenancy on August 18th, 2010 for September 1st, 2010. The landlord said that he told the tenant that he would return her security deposit if he could find a new tenant by September 1st. He stated that a new tenant was found for that date; however claimed that the damages to the suite equalled the amount of the security and pet damage deposits. The landlord said that the suite was very clean with the exception of carpet stains in both bedrooms.

The landlord said that the tenant reported the stains early August 2010. He said that the tenant tried to remove the stains herself, but later agreed to have them removed professionally. The landlord said that even so, the stains did not come out and the carpets had to be replaced. The landlord described the damage as one 2 to 3 inch square bleach stain in one bedroom, and 2 or 3 similar stains in the master bedroom. The landlord said that the tenant paid him \$187.80 for cleaning the carpets, and \$200.00 for advertising and showing the suite on short notice.

The landlord made a subsequent monetary claim, which is the subject of this dispute and provided a receipt of \$800.31 plus HST for the new carpets. The landlord said that the carpets were 1 ½ years old. The landlord could not recall when the move-out condition inspection report was completed, but stated that the tenant was not present.

The tenant testified that the landlord is lying. She stated that the landlord advised her to use a spot remover and to remove the stains herself. She stated that she told the landlord that the stains were caused by a repairman who came to the unit in her absence to fix curtain rods in both bedrooms. She stated that she moved out of the unit around August 27th; that she hired a professional to clean the unit on August 29th; and that this cleaning person told her that the stains had been removed and that the carpets were spotless. The tenant said that she never signed the condition inspection report on move-in day, and alleged that someone forged her signature on the document.

She stated that the landlord never produced any receipts and argued that the carpets did not need to be replaced.

Turning to the tenant's application; based on the cleaning person's report and that the landlord found a new tenant by September 1st, 2010, the tenant testified that she should be refunded the original cost of \$387.80, and that the landlord should return her security and pet damage deposits.

The tenant stated that within three weeks into the tenancy, she noticed fleas in the unit. She said that she notified the landlord mid-June but that he took no action. She stated that the problem prevailed and that she was forced to move out. The tenant made a monetary claim as follows:

- Return of the security and pet damage deposits:	\$ 950.00
- Return of her original compensation to the landlord:	\$ 387.80
- Cost to treat her dog due to the fleas:	\$ 255.00
- Filing fee:	\$ 50.00
- Total:	\$1642.80

The landlord acknowledged that the tenant informed her of the flea problem, but argued that she told him that she would handle it. The landlord also questioned whether the fleas came from the previous tenant's pet or from this tenant's dog. He stated that the tenant moved out because she found a bigger place, not because of the fleas.

Analysis

The landlord bears the burden to prove his monetary claim for the damages to the carpet. Conversely, the tenant bears the burden to prove that she is justified to claim her security and pet damage deposits, a refund of pre-approved repairs, and the costs associated with the fleas.

Section 35(2) of the *Residential Tenancy Act* provides in part that the landlord must offer the tenant at least 2 opportunities, as prescribed, for an inspection, and that the landlord must complete a condition inspection report in accordance with the regulations.

Section 35(4) of the Act further states that both the landlord and the tenant must sign the condition inspection report, and that the landlord must provide the tenant a copy of that report.

Section 7 of the Act also provides in part that the right to claim a claim for damage was caused by a party's failure to comply with the Act.

In this matter, there was no evidence that the landlord provided the tenant with two opportunities to complete the condition inspection report at the end of the tenancy. The report was not dated or signed. The extent of damages reported by the landlord was not supported with material or photographic evidence, nor could the landlord prove that they were caused by the tenant's non-compliance with the Act. The Act also provides for reasonable wear and tear in rental accommodations: it is not reasonable to expect, even during a short term tenancy, that tenants ought to bring the rental unit back to its original condition. For these reasons, I do not find sufficient evidence, on the balance of probabilities that the carpets needed replacement and the landlord's application is dismissed in its entirety.

Turning to the tenant's claim; the landlord agreed that the unit was otherwise very clean and took no issue with its condition at the end of the tenancy. For the above noted reasons, I find that the tenant is entitled to the return of her security and pet damage deposit.

Concerning the refund of her original compensation of \$387.80; there was no dispute that staining occurred, and that the tenant agreed with the landlord to remove the stains professionally.

There was also no dispute that the tenant did not provide a proper one month notice to end tenancy, which created unexpected and premature administrative costs for the landlord. The landlord's steps proved successful since he found a new tenant with 12 days and in so doing minimized his loss. For these reasons, I find that the landlord is entitled to keep the original claim of \$387.80.

Lastly, there was no dispute that a report of the presence of fleas on the tenant's dog was brought to the landlord's attention. Based on a conversation with the tenant, the landlord believed that the tenant took care of the problem. Although the tenant paid to treat her dog, the tenant provided no receipts to support her claim and I find insufficient evidence to prove the origin of the fleas. For these reasons I dismiss this portion of the tenant's claim.

Since the landlord's claim is dismissed, he will bear the cost of his filing fee. Since the tenant was partially successful, I grant the tenant partial recovery of the filing fee for \$25.00.

The tenant has established a claim as follows:

- Return of her security and pet damage deposits: \$950.00
- Filing fee: \$ 25.00
- Landlord's compensation (already retained): \$ 00.00
- Balance owing: \$975.00

Conclusion

Pursuant to Section 67 of the Act, I grant the tenant a Monetary Order for the sum of \$975.00. If necessary, This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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 03, 2011.

Residential Tenancy Branch