

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord handed the tenant a copy of the dispute resolution hearing package on October 19, 2010. I am satisfied that the landlord served this package to the tenant in accordance with the *Act* and that the parties served their evidence packages to one another.

Issues(s) to be Decided

Is the landlord entitled to retain any portion of the tenant's security deposit? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on September 1, 2004. Monthly rent was set at \$730.00, payable on the first of each month. The landlord testified that he continues to hold the tenant's \$300.00 security deposit (plus interest) paid on August 13, 2004. The tenant vacated the rental unit on or about October 1, 2010. The landlord provided copies of the joint move-in condition inspection report signed by both parties on September 1, 2004. The parties agreed that they conducted a joint move-out condition inspection on October 1, 2004. Since the tenant refused to sign that report, the landlord completed the report by signing it on October 4, 2004, a copy of which has now been forwarded to the tenant in advance of this hearing. The landlord applied for dispute resolution to retain a portion of the tenant's security deposit on October 14, 2010.

The landlord testified that there a number of items which were damaged during this tenancy, but said that he was only seeking the out of pocket expenses for carpet cleaning of \$199.96. He provided copies of the receipt for professional cleaning. He also applied for authorization to retain the \$50.00 fee for filing his application.

The landlord provided oral and written evidence that the carpets in the rental unit, particularly in the small bedroom had to be professionally cleaned and deodorized to remove the strong smell of urine from the rental unit. The landlord maintained that this

smell resulted from the tenant's pet(s). He noted that there was no reference to an offensive smell when the tenant occupied the rental unit in 2004.

The tenant agreed that there was a foul smell to the carpets in the small bedroom. She said that she tried to clean the carpet as best she could, but the smell had been offensive for some time. She attributed this to the age and condition of the carpets, photographs of which she entered into evidence. She said that these carpets were four years old when she moved into the rental unit six years ago. She also testified that the landlords had failed to attend to her concerns about rodents and other problems that had emerged over the course of her lengthy tenancy. She objected to the amount claimed by the landlord for carpets which she said clearly needed to be replaced.

The landlord said that an initial attempt was made to clean and remove the smell from the carpets. He said that when this failed the owner of the property decided to remove the carpets and replace them with another type of flooring, laminate as he recalled. He agreed that the \$199.96 fee for cleaning the carpets was much higher than would normally be charged because a special enzyme product had to be purchased and applied.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties agreed that there was a provision in their Residential Tenancy Agreement that required the carpets to be professionally cleaned when the tenant vacated the unit. Although the tenant said that she used to work as a professional cleaner, I am not satisfied that her rental of cleaning equipment and admitted unsuccessful attempt to clean the carpets herself constituted professional cleaning of the carpets. I also accept that both parties confirmed that there remained a strong smell, noted in the move-out condition inspection report, when the tenant vacated the premises. This smell was not noted in the move-in condition inspection report.

I accept that the landlord was hoping that professional cleaning would allow the carpets to be salvaged. However, I also take into account the undisputed evidence of the

tenant that these carpets were in poor condition and had not been replaced in over ten years. According to the Residential Tenancy Policy Guidelines, carpet replacement in a rental unit is typically necessary after ten years. Since it was the removal of the smell and not the carpets that caused the landlord to incur the professional carpet cleaning costs, the landlord is entitled to recover most of the \$199.96 in costs he incurred in trying to professionally clean the carpets. I am not convinced that the tenant should be held totally responsible for the landlord's decision to attempt to clean carpets that were in poor condition and subsequently removed. I allow the landlord to retain \$132.97 of the costs incurred for cleaning the carpets (i.e., two-thirds of his claimed costs) from the tenant's security deposit. As the landlord has been partially successful in his application, I allow him to recover \$25.00 of his filing fee from the tenant.

The current value of the tenant's \$300.00 security deposit plus interest is \$310.62 (\$300.00 + \$10.62). I allow the landlord to retain \$157.97 (\$132.97 + 25.00) from the tenant's \$310.62 security deposit. I issue a monetary Order in the tenant's favour requiring the landlord to return the remaining \$152.65 from the tenant's security deposit to the tenant forthwith.

Conclusion

I allow the landlord to retain \$157.97 from the tenant's security deposit. I order the landlord to return the remaining \$152.65 from the tenant's security deposit plus interest to the tenant and issue a monetary Order to that effect. The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.