



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit and the pet damage deposit retained by the landlord.

The application was also convened to hear the landlord's application for monetary compensation for cleaning costs.

Both the tenant and the landlord participated in the hearing by telephone and gave testimony.

Issue(s) to be Decided

The issue to be decided on the tenant's application was whether or not the tenant was entitled to a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issue to be decided on the landlord's application was whether or not the landlord was entitled to monetary compensation for damages.

Background and Evidence

The tenancy began on October 29, 2009, and the rent was \$875.00 per month. A security deposit of \$440.00 and a pet damaged deposit of \$440.00 was paid. The tenancy ended at the end of June 2010 and the tenant's written forwarding address was given to the landlord.

The tenant testified that the landlord failed to return the tenant's security and pet damaged deposits and the tenant is claiming double for a total of \$1,760.00 plus the filing costs.

The landlord testified that when the tenant vacated the unit, the carpet was not professionally shampooed and smelled of cat urine. The landlord testified that there was no odour problem with the carpets at the start of the tenancy. The landlord consulted a carpet expert and it was determined that the carpet needed special

treatments along with the cleaning at a cost of \$392.00. According to the landlord, the unit also required cleaning at a cost of \$55.44. The landlord had submitted late evidence in support of the monetary claims.

The tenant disputed that the carpet had a bad smell and stated that she had cleaned the carpet twice prior to vacating. The tenant stated that residual odours could have been present deep in the pile from previous tenancies. The tenant testified that there was also a stain on the carpet that predated her tenancy. The tenant also disputed that the unit was left in an unclean state and referred to photos of the unit she had placed in evidence. The tenant pointed out that the move-out condition inspection report confirmed that the unit was in a reasonably clean state when she vacated.

Analysis

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. The Act states that the landlord can retain a security deposit if the tenant give written permission at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord's right to merely keep the deposit does not exist.

However, a landlord could be able to retain the deposit to satisfy a liability or obligation of the tenant only if, after the end of the tenancy, the landlord has made an application for dispute resolution and successfully obtains an order retain the amount. However, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the matter before me, however, I find that under section 38, the tenant is entitled to double the \$440.00 security deposit amounting to \$880.00 and double the \$440.00 pet damage deposit amounting to an additional \$880.00 for a total claim of \$1,760.00.

In regard to the landlord's claim for the cost of carpet cleaning, Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that although the landlord's testimony was disputed by the tenant, I accept the landlord's evidence that the carpet did require professional cleaning. However, I find that the landlord did not offer sufficient proof to establish that the tenant should be held liable for the extra cleaning treatment. I also find that the move-in inspection report confirmed the tenant's testimony that the carpet in question already had a bleach stain on it when the tenancy began. Therefore I grant the landlord partial compensation of \$200.00 towards basic carpet cleaning costs. I dismiss the portion of the landlord's application seeking compensation for the cleaning of the unit as the photos and the condition inspection report indicate on a balance of probabilities that the unit was left in a reasonably clean state.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that, after deducting the \$200.00 owed to the landlord, the tenant is entitled to \$1,560.00 plus the \$50.00 cost of the application for a total monetary order of \$1,610.00

This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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 2011.

Residential Tenancy Branch