



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for loss under the Residential Tenancy Act (the "Act") and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Background and Evidence

The tenancy started on September 1, 2009, for a fixed term of one year, which continued on a month to month basis, ended at the end of October 2010, rent was \$760.00 and a security deposit of \$375.00 was paid at the beginning of the tenancy.

The Landlord claims as follows:

Nov '10 rent	\$760.00
Remote control	\$80.00
Filing fee	\$50.00
Total	\$962.80

I note that originally the Landlord claimed for a recoding fee for the remote control in the amount of \$150.00, but waived this amount in the hearing.

The Landlord supplied into evidence the tenancy agreement, the Tenant's notice to vacate, a carpet cleaning invoice, a condition inspection report and a remote control agreement.

In support of the claim, the Landlord's Agent testified that they received improper notice from the Tenant, on October 11, 2010, of her intent to vacate the rental unit at the end of October 2011. Therefore the Landlord's Agent submits the Landlord is entitled to loss of income for the month of November due of the lack of a proper written notice.

The Agent further submitted that the Tenant failed to return the remote control and that the Tenant owed the amount of \$80.00.

The Landlord's Agent submitted that the carpet cleaning was necessary due to the Tenant's failure to clean the carpet at the end of the tenancy, as noted in #23 of the tenancy agreement, and that the amount listed in the receipt was a standard charge by the carpet cleaning company.

Upon query, the Landlord's Agent could not verify the date the rental unit was again marketed for re-rent nor did she provide documentary proof that the rental unit had been advertised. The Landlord's Agent was not clear in how many times the rental unit was shown.

In response, the Tenant submitted that she was compelled to move due to her new husband having a cat and the Landlord's prohibition against pets. The Tenant stated that the Landlord did not advertise her rental unit, even though she had kept the unit neat and tidy and it was ready for anyone to move in. The Tenant submitted that she later spoke to a new tenant, who stated that he was not offered a viewing of her apartment and that he would have taken it had he been shown the unit as it was a non smoking unit.

In support of her claim, the Tenant submitted the Landlord's internet listings and advertisements for other units, but not the Tenant's rental unit. The Tenant testified that the Landlord placed no advertisements for her rental unit, even though she offered the Agent to take pictures of her rental unit.

The Tenant testified that she was not allowed back into the rental unit to clean the carpets and pointed out that the carpet cleaning receipt provided by the Landlord was dated on November 22, 2010, even though she was charged this amount on the move out inspection.

The Tenant submitted that she offered to return the remote control.

Analysis

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

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.

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.

As to the Landlord's claim for lost rent for November 2010, in the absence of documentary proof and testimony of a specific date when the rental unit was advertised, I find the Landlord did not submit proof that they took the necessary steps to mitigate their claimed loss by advertising and marketing of the rental unit. Rather I find the proof submitted by the Tenant substantiates the Tenant's claim that the Landlord failed to take any steps to mitigate their loss. Therefore I **dismiss** their claim for **\$760.00** for the November 2010 rent.

As to the carpet cleaning, even though the receipt was dated after the inspection which leads me to question the Landlord's evidence, I find the Tenant was required to professionally clean the carpet, pursuant to the tenancy agreement. I find the cost mentioned in the receipt to be reasonable and I therefore **allow** the Landlord's claim for **\$72.80**.

As to the remote control, I find this issue is be separate agreement and therefore not covered by the Residential Tenancy Act. I therefore lack jurisdiction to consider this matter and the parties are at liberty to seek the appropriate legal remedy.

Lastly, as the Landlord was substantially unsuccessful in their claim, I find they are not entitled to recover the filing fee.

I find the Landlord has established a monetary claim in the amount of **\$72.80** for carpet cleaning. Therefore I allow the Landlord to deduct this amount for the security deposit of \$375.00 and I **direct** that the Landlord return the balance to the Tenant, in the amount of **\$302.20**.

I **grant** the Tenant an order under section 67 for the amount of **\$302.20**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is entitled to retain the amount of \$72.80 from the security deposit in satisfaction of their monetary claim and return to the Tenant the balance owed in the amount of \$302.20.

The Tenant is granted a monetary order in the amount of \$302.20.

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: March 24, 2011.

Residential Tenancy Branch