



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 hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing and gave affirmed testimony, however, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 29, 2011, the tenant did not attend. The landlord also provided evidence in advance of the hearing and stated that she provided the same evidence to the tenant. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy began on January 17, 2008 and was renewed annually, ultimately having an expiry date of January 16, 2011. The landlord testified that the tenant actually moved from the rental unit on or about January 20, 2011. Rent in the amount of \$1,700.00 per month was payable in advance on the 17th day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$850.00 and the landlord still holds that deposit in trust. The rental unit is an apartment in a condominium complex. No move-in or move-out condition inspection report was completed.

The landlord testified that the tenant removed a set of sliding glass doors within the unit that had separated a bedroom from a den, thereby altering the floor plan of the condo. Also, the tenant removed a double pane of glass from a door on the balcony and added a cat entry without permission to do so from the landlord. The landlord provided a photograph of each of the windows and stated one is from before the tenant moved in and the other after the tenant moved out.

The landlord also testified that the tenant left a stain on the carpet which could not be removed, and she had to replace the carpet. She provided a photograph of the carpet after the tenant moved out, but no photograph of the carpet before the tenant moved in.

The Landlord's Application for Dispute Resolution claims \$1,250.00, however the landlord testified at the hearing that she did not replace the sliding glass doors because she received an estimate and could not afford the cost. Also, the tenant returned the double pane glass for the balcony door and installation will be the only cost, but did not provide an amount for that. Also, the carpet cost about \$700.00 to replace, but the landlord did not provide any evidence of that cost. The landlord stated that she wishes to retain the security deposit for the damages.

Analysis

Firstly, in order to be successful in a claim for damages, the onus is on the claiming party to pass the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of the loss or damage;
4. What efforts the claiming party made to mitigate the damage or loss.

I have no evidence before me proving the cost of replacing the sliding glass doors, installing the glass in the balcony door, or the cost of replacing the carpet. Therefore, I find that the landlord has failed to provide any evidence to satisfy element 3 of the test for damages.

Further, the landlord has an obligation to complete a move-in condition inspection report and a move-out condition inspection report. The *Residential Tenancy Act* also states that if a landlord fails to complete those reports, the landlord's right to claim against the security deposit for damages is extinguished. Also, I have the evidence of the landlord that the photographs were before and after the tenant moved in/out of the rental unit,

however, the *Act* requires that both the landlord and the tenant attend for the condition inspections.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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 21, 2011.

Residential Tenancy Branch