



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for damage to the unit, site or property, an order to keep the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on November 12, 2010. The tenant confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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 keep the tenants security deposit?

Background and Evidence

Both Parties agree that this tenancy started on May 01, 2004 and ended on November 01, 2010. Rent for this unit started at \$1,200.00 and increased to \$1,290.00. The tenant paid a security deposit of \$600.00 on May 01, 2004. The tenant gave the landlord her forwarding address in writing on October 30, 2010.

The landlords' agent testifies that she did a walk around of the property with the tenant at the end of the tenancy and everything looked fine. The carpets had been cleaned by the tenant and were still wet. She states she did not fill in a move out condition inspection with the tenant. Later the landlords agent testifies she was looking over the property with the landlord and they noticed the carpets smelt of cat urine and a bracket in the dishwasher was broken and had been tied up with wire.

The landlords' agent testifies the carpets had to be cleaned again by a professional carpet cleaner at a cost of \$257.60 and she has presented the receipt for this in evidence. She states the landlord got a quote for the repair to the dishwasher but as this was just under the cost of replacing the dishwasher the landlord decided to replace it instead and seeks to recover the sum of \$343.84 which would have been the repair cost. The landlords' agent has provided the quote for repair and the receipt for the replacement dishwasher. The landlords agent states the old dishwasher was purchased five months prior to the tenancy commencing and would have been just over seven years old at the end of the tenancy.

The landlord seeks an Order to keep the security deposit and any accrued interest in satisfaction of these costs.

The tenant testifies that the landlord did not complete a move in condition inspection at the start of the tenancy so the tenant did her own inspection and report and sent this to the landlords' agent who signed off on it to confirm the condition of the rental unit at the start of her tenancy. The tenant testifies that the carpets at that time were noted as being stained and they smelt of cat urine. The tenant testifies she had a previous hearing concerning the carpets and was successful. The landlord then had someone in to inspect the carpets at that time and this person told the tenant the cat urine had soaked through the carpet into the underlay and floor and the smell would continually come back through. The tenant testifies that she regularly cleaned the carpets herself and the cat urine smell would come back once the carpets were dry.

The tenant states she did not have the carpets professionally cleaned at the end of her tenancy but did hire a carpet cleaner herself as the landlord told her the carpets were old and would be replaced.

The tenant states that the dishwasher bracket became broken through normal wear and tear. She testifies she informed the landlords' agent of this many times but it was never repaired so she tied the bracket up with wire to prevent the other side becoming damaged when she put dishes into it. The tenant states as the dishwasher was over seven years old and the bracket did not break through any negligence on her part she should not be held responsible for its repair or replacement.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

Sections 24(2) and s. 36(2) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished if the landlord has failed to comply with sections 23(1) and 35(1). As it was the tenant who completed the move in condition inspection and no inspection report was completed at the end of the tenancy the landlord has therefore extinguished her right to keep the security deposit for damages.

In any event the move in inspection that the tenant did complete does show that the carpets were stained and smelt of cat urine at the start of the tenancy and this report was signed off by either the landlords' agent or the landlord at that time. Therefore the landlord cannot now try to

recover carpet cleaning costs from the tenant as there is no evidence that the cat urine was caused by the actions or neglect of the tenant or her pet.

I would also state that when a dishwasher has a normal life span of 10 years and a bracket in this dishwasher became broken during a tenancy the landlord should have sent someone to look at possible repair to the dishwasher at that time unless they could meet the burden of proof that this damage was caused by the actions or neglect of the tenant.

As the landlord has not met the burden of proof that the tenants' cat damaged the carpet or the tenants actions damaged the dishwasher beyond normal wear and tear the landlords' application for damages and to keep the security deposit are both dismissed.

As the landlord has been unsuccessful with her claim she must bear the cost of filing her own application.

Conclusion

The landlords' application is dismissed in its entirety 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 15, 2011.

Residential Tenancy Branch