



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; authorization for retention of all or part of the security deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence, including a registered mail tracking receipt, that the tenant was served with the hearing documents by registered mail sent on January 17, 2011. I was satisfied that the tenant was sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to carpet cleaning costs?
2. Is the landlord entitled to recover liquidated damages from the tenant?
3. Is the landlord authorized to retain a portion of the tenant's security deposit?

Background and Evidence

The one-year fixed term tenancy commenced February 1, 2010. The tenant paid a \$537.50 security deposit. The tenant vacated the rental unit on December 30, 2010 and the landlord was able to re-rent the unit for January 1, 2011. The tenancy agreement provides for a liquidated damages clause requiring payment of \$300.00 should the tenant end the tenancy before the expiration of the fixed term.

The tenant signed a document on December 30, 2010 authorizing the landlord to deduct carpet cleaning costs of \$65.00 from the security deposit. In making this application the landlord is also seeking authorization to deduct liquidated damages of \$300.00, carpet cleaning costs of \$72.80, and recovery of the filing fee.

The landlord explained that at the time of the move-out inspection the landlord neglected to seek the tenant's written authorization to deduct liquidated damages and upon realizing this omission proceeded to make this application. The landlord also

stated that \$114.70 of the security deposit was refunded to tenant two weeks after the tenancy ended.

Documentary evidence provided for this proceeding included a copy of the tenancy agreement, carpet cleaning invoice, inspection reports, tenant's written authorization to deduct carpet cleaning costs, and the tenant's ledger.

Analysis

Upon review of the documentary evidence before me, I accept that the tenant agreed that the carpets required cleaning. Upon review of the carpet cleaning invoice I authorize the landlord to deduct \$72.80 from the tenant's security deposit.

Where a tenancy agreement provides for such a term, a landlord may charge the tenant a pre-determined amount should the tenant end the tenancy earlier than the fixed term expiry date. Such a term is enforceable so long as it is a genuine pre-estimate of costs to re-rent a unit and not a penalty. I do not find the amount of \$300.00 to constitute a penalty and upon review of the tenancy agreement I am satisfied that the landlord is entitled to charge the tenant liquidated damages of \$300.00 for ending the tenancy earlier than the expiration of the fixed term. Accordingly, I authorize the landlord to deduct \$300.00 from the tenant's security deposit.

I do not award the filing fee to the landlord as I found the need to make this application arose from the landlord neglecting to seek the tenant's written authorization for such a deduction at the time of the move-out inspection, or within a reasonable amount of time thereafter.

I accept that the landlord has refunded \$114.70 and **I order the landlord to pay the tenant the balance of \$50.00** calculated as follows:

Security deposit	\$ 537.50
Less: authorized deduction for carpet cleaning	(72.80)
Less: authorized deduction for liquidated damages	<u>(300.00)</u>
Sub-total	\$ 164.70
Less: partial refund paid to tenant	<u>(114.70)</u>
Amount owed to tenant	\$ 50.00

The tenant has been provided a Monetary Order to ensure the landlord pays the tenant \$50.00.

Conclusion

The landlord has been authorized to deduct carpet cleaning costs and liquidated damages from the tenant's security deposit. Taking into account the partial refund already sent to the tenant I order the landlord to pay the tenant the balance of \$50.00 forthwith. The tenant has been provided a Monetary Order to serve upon the landlord as necessary.

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 08, 2011.

Residential Tenancy Branch