



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order to keep all or part of the security deposit and to recover the filing fee for the Application.

The Landlord's Agent and the Tenant's sister 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 an order to keep all or part of the security deposit under section 38 of the *Residential Tenancy Act* (the "Act") and to recover the filing fee?

Background and Evidence

I heard testimony from the Landlord that this tenancy began on August 1, 2000, ended on November 29, 2010, and that the Tenant paid a security deposit of \$315.00 on July 10, 2000.

The Landlord's relevant evidence included a copy of an invoice for replacing a toilet seat and tank, dated September 15, 2006, in the amount of \$175.00, an invoice for a flood call relating to the toilet damage, dated September 15, 2006, in the amount of \$159.00, a copy of a utility bill for \$63.54 and a statement regarding suite cleaning, in the amount of \$112.00. The Landlord's total claim is \$509.54 plus the filing fee.

In support of the application, the Landlord's Agent stated that there was an accident by the Tenant's boyfriend which caused the toilet to break and cause a flood, which necessitated the Landlord to incur the expenses for toilet repair and carpet restoration from the flooding. When queried as to why the Landlord waited for so long to collect this amount from the Tenant, namely in excess of four years after the end of the tenancy, the Landlord's Agent stated that they had tried to collect it personally from the Tenant for four years.

Upon query, the Landlord's Agent stated that the utility bill had been paid, but I note there was no evidence of the payment.

The Landlord's Agent testified that the rental unit needed cleaning after the Tenant vacated, but the Agent did not submit that the Tenant had failed to clean the rental unit. The Landlord's Agent stated that there was a move out inspection, but did not supply it into evidence. Further, the Agent could not state how old the blinds were.

In response the Tenant's representative stated that the rental unit was thoroughly cleaned by herself and her mother and stated that she had taken pictures to verify how clean the suite was at the end of the tenancy. These photos were not submitted into evidence.

The representative stated that she had paid the utility bill herself on behalf of the Tenant and submitted that the Landlord had opened the Tenant's mail without authorization.

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, the Landlord in this case, 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 claim for carpet restoration in the amount of \$159.00 and the toilet repair in the amount of \$175.00, I find the Landlord did not take the necessary steps to collect this amount in a timely manner and failed to diligently pursue this claim. Therefore I find the Landlord submitted insufficient evidence to prove the fourth element of mitigating their claimed loss for these amounts and I **dismiss** the Landlord's claim for **\$334.00**.

As to the Landlord's claim for suite cleaning in the amount of \$112.00, I find on a balance of probabilities that the Tenant met her requirement of leaving the rental unit reasonably clean. I find that the statement of the suite cleaning indicates very little which required attention, especially considering that this tenancy was in excess of ten years. Rather I find that the small amount of items listed in the statement, such as blind cleaning, suggested that the Landlord was preparing the rental unit to be in a move-in condition for a future tenant, which is not the Tenant's responsibility. Additionally the

Landlord did not submit any proof of the condition of the rental unit at the end of the tenancy. I therefore **dismiss** the Landlord's claim for **\$112.00**.

As to the Landlord's claim for the utility charge in the amount of \$63.54, I accept the testimony of the Tenant's representative and find that the utility bill was paid by the Tenant. Further, the Landlord did not submit any proof that the Landlord had paid this amount. I therefore **dismiss** the Landlord's claim for **\$63.54**.

Due to the above, I **dismiss** the Landlord's Application in its entirety and decline to award the filing fee.

Residential Tenancy Branch Policy Guideline 17 regarding security deposits states the dispute resolution officer will order the return of the security deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return. As I have dismissed the Landlord's application, I find that the Landlord is not entitled to retain any portion of the security deposit and I **direct** the Landlord to return the security deposit and interest of \$339.18 to the Tenant, pursuant to section 38 of the Act.

I **grant** the Tenant an Order under section 67 for the amount of **\$339.18**. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Landlord's Application is dismissed.

The Tenant is granted a monetary order for **\$339.18**.

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: April 28, 2011.

Residential Tenancy Branch