



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The landlord company was represented by an agent and one of the named tenants also appeared. The parties both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information and testimony provided has been reviewed and is considered in this Decision.

The landlord advised that both tenants were served by registered mail with the Landlord's Application for Dispute Resolution and Notice of Hearing documents, but was not able to provide the dates of such service.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

The landlord's agent testified that this fixed-term tenancy began on May 1, 2010 and was to expire on February 28, 2011 but the tenants moved from the rental unit on January 18, 2011. Rent in the amount of \$850.00 per month was payable in advance on the 1st day of each month and the landlord collected a security deposit from the tenants in the amount of \$350.00.

The landlord's agent further testified that the unit was re-rented on February 1, 2011, and the Landlord's Application for Dispute Resolution states that the claim is for rent for the month of February, 2011; therefore the landlord is not claiming unpaid rent as stated in the application, but damages for cleaning. He stated that a move-in condition inspection report was completed on April 30, 2010 and a move-out condition inspection report was completed on January 19, 2011, although he did not provide copies of those inspection reports. The agent further testified that the unit required cleaning at the end of the tenancy and the landlord is claiming \$60.00, being \$30.00 per hour for 2 hours of cleaning, as well as \$120.00 for carpet cleaning and \$30.00 to repair a hole in the drywall. The landlord did not provide any evidence of paying those amounts or that the damage exists. He also stated that the move-in/out condition inspection reports provided by the tenant in advance of the hearing does not specify what damage or loss was evident, other than all carpets need cleaning. When questioned about the condition of the carpets and whether or not it was normal wear and tear, the landlord's agent was unable to provide evidence to support that.

The tenant testified that she and her partner resided in a different unit prior to this tenancy and paid the same landlord \$350.00 for a security deposit on January 15, 2010, which was transferred to this rental unit on April 30, 2010 and then the landlord collected an additional \$75.00 bringing the security deposit amount to \$425.00.

The tenant further testified that she and her partner moved out on January 18, 2011 and the move-out condition inspection report was completed on January 19, 2011 with the male tenant. She admitted to the hole in the drywall and agrees to the \$30.00 charge for repairing it.

The tenant received \$140.00 of the security deposit in the mail sometime around the first week of February, 2011.

The landlord's agent acknowledged receiving the extra \$75.00 for the security deposit during cross examination, but further testified that the tenant was in arrears of rent in the amount of \$75.00 in June, 2010.

Analysis

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 opposing party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of the damage or loss;
4. What steps the claiming party took to mitigate, or reduce the damage or loss suffered.

In this case, the landlord has failed to establish any of the elements. The tenant has admitted to the hole in the drywall and agrees to \$30.00. I find that the landlord has failed to establish any other damage or loss suffered.

I further find that the landlord has failed to establish that any arrears of rent are owed, and has not claimed unpaid rent for June in the application. The landlord did not provide evidence of the extra \$75.00 paid by the tenants toward the security deposit until the tenant raised that issue, and then the landlord's agent argued that rental arrears in that amount are owed from last June.

The landlord has returned \$140.00 of the \$425.00, leaving a balance of \$285.00 held in trust. I find that the landlord is entitled to \$30.00 of that amount, in addition to the \$50.00 filing fee. The balance of \$205.00 is due to the tenant.

Conclusion

For the reasons set out above, I hereby order that the landlord retain the sum of \$80.00 from the security deposit and return the balance of \$205.00 to the tenants forthwith.

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 01, 2011.

Residential Tenancy Branch