



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

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

The Landlord, Tenant, and Tenant's agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to cross-examine the other party, and make submissions to me.

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.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

This month to month tenancy began on August 1, 2010, ended on December 31, 2010, monthly rent was \$950.00, and the Landlord is holding a security deposit of \$250.00.

The Landlord's claim is \$795.00, which includes stains on the carpet and washing machine. The Landlord has also requested to retain the balance of the security deposit, \$250.00, which is the remainder after his payment of \$250.00 to the Tenant.

In support of his claim, the Landlord submitted that the Tenant had left stains on the carpet, although these stains were not noted on the move out inspection report. The Landlord stated that the move out inspection was completed prior to the carpet cleaning and also speculated that due to darkness, perhaps his agent was unable to see the

stains at the time of the inspection. The Landlord stated that due to the stains, the carpet could not be cleaned and had to be replaced.

In support the Landlord submitted photos of a carpet which appeared stained.

The Landlord further submitted that the Tenant caused stains to the washing machine door liner, and in support submitted a photo of the liner. During the hearing, the Landlord withdrew the portion of the claim relating to the washing machine.

The Tenant submitted that there was no mention of carpet stains during the move out inspection and further, the Tenant denied staining the carpet. The Tenant denied staining the washing machine door liner, saying that it needed a clean when he moved in.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party, the Landlord in this case, making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

A review of the carpet photos reveals stains which would have been evident or clear on the date of inspection, yet the stains were not mentioned on the move out inspection report. I therefore find that the testimony of the Landlord regarding carpet staining lacked credibility. On a balance of probabilities, I find that the Landlord submitted insufficient evidence to prove that the Tenant stained the carpet and I therefore **dismiss** his claim for damages to the rental unit.

As the Landlord withdrew his request for damage to the washing machine, I **dismiss** the Landlord's application in its entirety, without leave to reapply.

As the Landlord has mentioned cleaning the rental unit in his evidence, I **dismiss** any claim for cleaning of the rental unit, for failure to provide proof that the rental unit required cleaning after the Tenant's vacancy.

As I have dismissed the Landlord's application, I decline to award the filing fee.

I **direct** that the Landlord return to the Tenant the balance of the security deposit in the amount of \$250.00. I **grant** the Tenant an order under section 67 for the amount of **\$250.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's application is dismissed.

The Tenant is granted a monetary order of \$250.00.

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: June 03, 2011.

Residential Tenancy Branch