



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 15, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent/utilities arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent/utilities and if so how much?
3. Is the landlord entitled to compensation for damage to the unit and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2008 as a month to month tenancy. Rent was \$695.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$345.00 on September 26, 2008.

The Landlord said that the Tenant did not pay her share of the utilities to the tenant in the other rental unit whose name the utilities were in. As a result the Landlord said the tenant in the other rental unit deduced the amount of unpaid utilities from the rent she paid to the Landlord and now the Landlord said he is claiming compensation from the Tenant/ Respondent for the unpaid utilities. The Landlord said the amount of unpaid utilities is confusing. He said the amount of the application is \$277.11, but he said the actual amount of unpaid utilities is \$328.34.

The Landlord continued to say that the Tenant damaged a light fixture which he replaced for \$75.00, three blinds at \$29.00 each in the amount of \$89.00, he is also requesting the cost of cleaning the carpets in the amount of \$95.20 and late charges for the rent for 12 months at \$25.00 per month in the amount of \$300.00. The Landlord said his total claim on the application is \$863.47, but the Landlord said he would be satisfied if the Tenant paid him for the utilities, the light fixture, the blinds and the carpet cleaning, in the amount of \$587.54 plus the \$50.00 filing fee for this proceeding.

The Tenant said the payment of the utilities was an agreement between her and the other tenant and the Landlord was not part of that arrangement therefore his claim for the utilities should not be part of this application. The Tenant also said the utilities are not mentioned in the tenancy agreement.

The Tenant continued to say that the light fixture was not installed when she moved in and the space on the move in inspection report for light fixtures was left blank as the Landlord was to install it, which he did not do. The Tenant said that her child did break the fixture because it was on the floor in the unit and as a result she said she is willing to pay for ½ of the replacement cost of \$37.50 to the Landlord because she believes it was both of their fault that it got broken.

The Tenant said the Landlord's claim for carpet cleaning is not justified because the carpets were replaced in the dining and living rooms 2 months before the end of the tenancy. The Tenant said she kept the unit clean and the carpets were in good condition when she moved out. As well, she said she disagreed with the Landlord on the move out inspection report as she said the floor was vacuumed and the Landlord said the floor was not vacuumed when the Tenant move out.

The Tenant continued to say the damage to the blinds were normal wear and tear and that she had priced the blinds at \$13.97 each to replace them. She said she would pay the Landlord \$41.91 to pay for the replacement of the three sets of blinds.

The Tenant said she did not agree with the landlord claiming the \$25.00 late fee for 12 months as he had not charge her regularly before for being late with the rent. The Landlord said he did not talk to the Tenant about the late charges as he thought he would collect them at the end of the tenancy.

The parties were given an opportunity to settle the dispute between themselves, but they did not make an agreement.

Analysis

Section 46 (6) says if the tenancy agreement says the tenant is to pay utilities charged to the landlord and the utility charges are unpaid more than 30 days after

the tenant is given written demand for payment then the landlord may treat the unpaid utility charges as unpaid rent.

As the utilities are not part of the tenancy agreement and there is no agreement between the Landlord and the Tenant regarding the utilities because that arrangement was made with the other tenant, I find that the Landlord has not established grounds to prove the Tenant owes the Landlord for unpaid utilities, consequently I dismiss the Landlord's claim for unpaid utilities without leave to reapply.

Section 32 says a tenant must repair damage to the rental unit caused by actions or neglect by the tenant or persons permitted on the property. I find the damage to the light fixture and the blinds are the responsibility of the Tenant and they are not normal wear and tear therefore; I find the Landlord has established grounds for his claim for the light fixture of \$75.00 and for the blinds of \$87.00 for a total of \$162.00.

With respect to the carpet cleaning I accept the Tenant's testimony that the carpet in the living room and dining room was newly installed 2 months prior to the end of the tenancy and that the Tenant vacuumed the carpets on move out, consequently the Landlord's claim for carpet cleaning is dismissed without leave to reapply.

The Landlord's claim for late charges is dismissed without leave to reapply as it is the Landlord's obligation to advise the tenant of any extra fees or charges as they occur and to collect them as they are charged. The Landlord did not advise the Tenant of each late charge as incurred and the Landlord said he did not try to collect the late charges as they were incurred; therefore the claim for late charges are extinguished.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep part of the Tenant's security deposit in full payment of the damages. The Landlord is ordered to retain \$212.00 of the Tenants security deposit and the Landlord is Ordered to return the balance of the security deposit of \$133.00 plus accrued interest of \$1.72 in the total amount of \$134.72 to the Tenant forthwith.

Conclusion

The Landlord is ordered to retain \$212.00 of the Tenant's security deposit.

The Landlord's claim for unpaid utilities, carpet cleaning and late rent payments are dismissed 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*.

Residential Tenancy Branch