



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1542.16, a request to retain the security deposit of \$337.50 towards the claim, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The parties agree on the following:

- This tenancy began on April 1, 2010 and the tenant vacated on January 1, 2011.
- The tenant gave the landlord or verbal notice on December 22, 2010, that she would be vacating the rental unit on January 1, 2011.

- Rent for this unit was \$677.00 per month, and the tenant paid a security deposit of \$332.50 on March 17, 2010.
- No move in inspection report was done at the beginning of the tenancy.

The applicant testified that:

- When the tenant moved out of the rental unit he found the carpets in the rental unit badly frayed and they could not be repaired, and as a result they had to be replaced. The carpets were only one year old when the tenant moved into the rental unit.
- The tenant also left a large amount of rubbish behind in the rental unit and as a result he had to pay to have that rubbish removed.
- The tenant also left the rental unit in need of a significant amount of cleaning.
- The tenant did not give the required one month clear notice to end tenancy and in fact no written notice was ever given. As a result of the short notice and the need for cleaning and removal of garbage he was unable to re-rent the unit in the month of January 2011 and therefore lost the full rental revenue for that month.

The applicant is therefore requesting an order as follows:

Replace carpets	\$636.16
Rubbish removal	\$150.00
Cleaning	\$81.00
Lost rental revenue for January 2011	\$675.00
Filing fee	\$50.00
Total	\$1592.16

The applicant is also requesting an order to keep the full security deposit towards the claim and requests a monetary order he issued for the difference.

The respondent testified that:

- The carpets were not in excellent condition when she moved into the rental unit, and in fact were already partially frayed with numerous strings coming up from the carpets.
- She does not dispute that some rubbish was left behind and that the unit was not properly cleaned, however she had been injured and was unable to access the rental unit and was relying on friends to remove her belongings and do the cleaning. She was unaware that her friends had left the unit in such poor condition.
- The unit may have been left in poor condition; however she did not receive the unit in good condition and in fact had to do a significant amount of cleaning when she moved in.
- She does not believe that she should have to pay for any lost rental revenue, because first of all she had no choice but to move, because due to injuries she incurred from a fall on the stairs leading from the landlords property she was no longer physically able to enter the rental unit, she could not handle the stairs. Secondly she does not believe the landlord took reasonable steps to mitigate the loss, as he did not attempt to clean the rental unit and re-rent the unit as soon as possible.

Analysis

Carpets

It is my decision landlord has not met the burden of proving a claim for carpet damage.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Since there was no move in inspection report produced, it is just the landlord's word against that of the tenant, and in this case the tenant claims that the carpets were damaged when she moved into the rental unit.

The claim for carpet damage is therefore dismissed.

Rubbish removal and cleaning

I will allow the claim for rubbish removal and cleaning, because it's obvious from the photo evidence provided that this rental unit was not left in reasonable condition, and a large amount of rubbish was left behind.

The tenant has even admitted that the people she thought were cleaning and removing her items had not done a thorough job.

Lost rental revenue

I also allow the landlord's claim for lost rental revenue.

The tenant did not give the required Notice to End Tenancy, nor did the tenant leave the rental unit in a reasonable condition and it is my finding that the landlord has lost the rental revenue for the month of January 2011 as a result.

The tenant has argued that the landlord did not mitigate; however considering the condition in which the rental unit was left I find it very unlikely that the landlord would have been able to re-rent the unit in the month of January 2011.

Conclusion

I have allowed the following portions of the landlords claim:

Rubbish removal	\$150.00
Cleaning	\$81.00
Lost rental revenue for January 2011	\$677.00
Filing fee	\$50.00
Total	\$958.00

I therefore order that the landlord may retain the full security deposit of \$332.50, and have issued a monetary order in the amount of \$625.50.

The remainder of the landlord's application is 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*.

Dated: July 29, 2011.

Residential Tenancy Branch