



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an Order for unpaid rent and an Order to keep all or part of the security deposit due to damage, cleaning and repairs to the rental unit.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 11, 2011, the tenant did not appear. The landlord provided a tracking number, testified that the mail was sent to the forwarding address provided by the tenant, testified that the tenant responded to her after receiving the Notice, and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

The landlord's Agent appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the tenant breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an Order to retain the security deposit in satisfaction of the monetary claim?

Background and Evidence

This month to month tenancy began on September 21, 2008, ended on March 31, 2011, when the tenant vacated the rental unit, the tenant's portion of monthly rent was \$354.00 and the tenant paid a security deposit of \$300.00 on October 7, 2008.

The testimony by the landlord's Agent demonstrated that during the course of the tenancy, the tenant frequently did not pay the exact amount of rent, sometimes paying

less and sometimes paying more. This resulted in a rental deficit of \$45.00 at the end of the tenancy.

The landlord's agent also submitted that she arranged a move out inspection with the tenant, but that the tenant chose not to attend.

The inspection was conducted in the tenant's absence, at which time a significant amount of damage was discovered, as well as discovering the tenant had not cleaned the rental unit or the carpet.

The landlord submitted a substantial amount of evidence documenting that the tenant had damaged the rental unit and had left the rental unit unclean and proving costs to remedy the damage and provide cleaning far in excess of the monetary order requested. However, the landlord requested that they be allowed to retain the security deposit and interest in the amount of \$301.06 in satisfaction of the claim.

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.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, 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.

I am satisfied, based on the unopposed testimony of the landlord and evidence, that the tenant failed to clean the carpet and the rental unit and damaged the rental unit beyond normal wear and tear.

I find that the landlord has established damages far in excess of the amount claimed, but at the landlord's request, I allow the landlord to retain the security deposit and interest in the amount of \$301.06 in satisfaction of the claim.

Conclusion

The landlord is authorized to retain the tenant's security deposit and interest in satisfaction of their monetary claim.

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 22, 2011.

Residential Tenancy Branch