



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage or loss - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a two bedroom unit began on June 30, 2010 and ended on April 30, 2011. Rent in the amount of \$1,050.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$525.00 and a pet deposit in the amount of \$525.00. A move-in inspection was conducted on June 30, 2010 and a move-out inspection was conducted on May 1, 2011. Reports from these two inspections have been provided as evidence.

The Landlord states that the Tenants caused the carpets in the unit to be damaged. The Landlord states that while the move-in report notes one carpet pull, the move-out inspection notes several pulls requiring the carpet in each room to be replaced. The Landlord states that when an inspector from a carpet company was called in to assess

the carpet, the inspector advised the Landlord that tufts were started perhaps by an animal or that the carpet itself may have caused the pulled strings. The Landlord states that the carpet was purchased new in May 2009. The Landlord claims \$2,727.78 for the cost to replace the carpet but states that the Landlord does not expect full reimbursement as some depreciation would be expected to reduce the reimbursement of this cost. The Landlord provided an estimate for this item and states that the estimate includes the replacement of the underlay but that the Landlord does not expect to replace the underlay and therefore does not claim the costs associated with the underlay.

The Landlord further states that while all the blinds in the unit were damaged to some degree by the Tenants, one blind was damaged significantly. The Landlord claims \$63.81 for the replacement of this blind and submitted a receipt for this purchased item. The Tenant does not dispute the damage to the blind but states that the amount is higher than the amount discussed between the parties prior to the hearing. The Tenant's counsel indicates that the amount of \$25.00 was discussed as the cost for the blind replacement.

The Tenant's counsel submits that the Tenants have not caused the damage to the carpet, that the move-in report indicates pre-existing damage to the carpet in the unit and that a third party known to both the Landlord and Tenant who obtained the unit for the Tenant has provided a letter indicating the extent of damage to the carpet at move-in. This third party states in the letter, confirmed by the Tenant to be dated May 5, 2011, that in discussions with the Landlord while showing the unit to the third party who was acting on behalf of the Tenants, the Landlord indicated that the carpet needed replacement given the pulls and stains on the carpet and that the Landlord would replace the carpets and paint the walls but that these tasks were never completed. The Tenant states that the pull marks on the carpet at move-in were such that the Tenant placed furniture over the damaged areas of the carpet.

The Tenant's counsel notes that the quote from the carpet company is dated April 27, 2011, a date prior to the move-out of the Tenants, and argues that this indicates the intention of the Landlord to replace the carpet even before the inspection of the carpets at the Tenant's move out. The Tenant states that at no time was the Landlord given permission to enter the unit and questions when an inspection for the quote took place. The Landlord states that entry into the Tenant's unit would never be made without the Tenant's permission but was unable to explain the date of the quote.

Analysis

In a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove, inter alia, on a balance of probabilities that the damage or loss was by the actions or neglect of the responding party. Considering the move-in report that notes the pre-existing damage to the carpet, and accepting the evidence of the third party, who is noted to have nothing to gain by providing the evidence, and taking into account the estimate for the replacement of the carpet that indicates a prior intention of the Landlord, I find that the Landlord has not proven on a balance of probabilities that the damage to the carpet was caused by the Tenants. Accordingly, I dismiss this part of the application.

As the Tenant has not disputed the damage to the blind and as the Landlord has provided a receipt for the cost of the replacement blind, I find that the Landlord has established an entitlement to a monetary award of \$63.81. As the Landlord has not been successful with the primary claim, I decline to make an award in relation to recovery of the filing fee. I order the Landlord to retain the amount of \$63.81 from the Tenant's security and pet deposit and to return the remaining amount of **\$986.19** (\$525.00 + 525.00 – 63.81) to the Tenant forthwith.

Conclusion

I order the Landlord to retain the amount of \$63.81 from the security deposit and return the remaining amount of \$986.19 to the Tenant forthwith. I grant the Tenant an order

under Section 67 of the Act for the amount of **\$986.19**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 17, 2011.

Residential Tenancy Branch