



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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 damages to the unit, site or property - 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.

I accept the Landlord’s witness evidence that the Tenant was served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Act. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Landlord stated that the application did not contain a tick on the claim for damages to the unit but that this was simply an innocent oversight and that such a claim was being made. The Tenant stated that it was clear by the description of the dispute on the application that the Landlord was making a claim for damages. Accepting the oversight and noting no prejudice to the Tenant, I amend the application to include a claim for damages, as set out above.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on June 1, 2010 and ended on May 31, 2011. Rent in the amount of \$1,800.00 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 \$900.00. Move-in and move-out inspections were conducted with both Parties and copies of the reports were submitted as evidence.

The Landlord states that the Tenant failed to keep the yard and landscaping maintained as agreed to and contained in the tenancy agreement and that on move-out the yard was overgrown with weeds. The Tenant states that the yard was maintained and lawn mowed approximately twice a week. The Tenant states that the yard was not noted to be a problem at move-out and that the note in the move-out report "needs lots of work" in relation to the exterior was inserted after the report was signed by the Tenant. The Landlord did not provide pictures as evidence for the claim and states that an estimate of \$280.00 was received for the cleanup of the yard. The Landlord could not say whether the work on the yard was completed but says that it likely was however no invoice for that work is available if it was done.

The Landlord states that the walls of the unit were dirty and required washing. The Landlord provided an invoice for his work completed and claims the amount of \$112.00. The Tenant states that the walls were cleaner at move-out than in move-in and that at move-in the walls were in rough shape with hundreds of marks on the walls. It is noted that the move-in report contains record of numerous marks, etc to all the walls in the unit.

The Landlord states that the Tenant failed to clean the carpet at move-out and claims the amount of \$280.00. The Tenant states that the carpets were not cleaned at move-out but states that he finds the amount claimed to be higher than reasonable as the carpets were barely used as the Tenant was away from the house for most of the tenancy. The Tenant states that the unit is a three bedroom unit, that he is a sole Tenant and that on occasion he would have his children stay in the bedrooms.

The Landlord states that although there were other damages to the unit such as scratches to the floor, they chose only to claim for the major items.

Analysis

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the Landlord's evidence of weeds in the yard, noting the lack of photo evidence and accepting the Tenant's evidence that the yard was maintained and the move-out report was changed after it was signed, I find that the Landlord has not substantiated on a balance of probabilities that there were damages as claimed to the yard and I therefore dismiss this part of the claim.

Given the undisputed evidence that the carpets were not cleaned at move out and given the invoice setting out the costs for cleaning the carpet, I find that the Landlord has

substantiated this claim and find that the Landlord is entitled to the amount of **\$280.00** for the carpet cleaning. As the Landlord's application was not fully successful, I make no award in relation to the filing fee.

Conclusion

I order that the Landlord retain the amount of \$280.00 from the **deposit** and interest of \$900.00 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the balance due of **\$620.00**. 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: September 20, 2011.

Residential Tenancy Branch