

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing in person.

This hearing was previously adjourned from August 9, 2011 by conference call as the Landlord's Agent failed to provide any permission from the Landlord to attend by agency as he was overseas on a vacation. The Tenant's as well appeared through the assistance of a Korean Interpreter.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

This tenancy began on July 1, 2010 on a fixed term tenancy until June 30, 2011 as shown in the submitted signed copy of the tenancy agreement. The monthly rent was \$1,650.00 payable on the 1st of each month. A security deposit of \$825.00 was paid on May 25, 2010 and a pet damage deposit of \$825.00 was paid on May 27, 2010. Both deposits are currently held in trust by the Landlord.

The Landlord is seeking to claim one months rent of \$1,650.00 for April 2011. The Tenant disputes this. The Landlord has provided an additional agreement in Korean which has been translated into English. The Tenant states that this additional agreement bears his signature and is an accurate translation of the agreement made. The Landlord's English translation states that the both parties agree to mutually end the tenancy on March 25, 2011. The Tenant further agrees to pay to the Landlord the rent for April (\$1,650.00) which the Landlord would then forgive the rent for May and June to prematurely end the fixed term tenancy. The Landlord states that the Tenant made a stop payment on this April rent cheque and has provided a copy of the stopped cheque. The Agreement also states that the Tenant would agree to not seek the return of the

April rent if the Landlord is able to re-rent the unit in April. The Tenant states that a further verbal agreement was made that if the Tenant was able to sublet the tenancy that the Landlord would return the April rent. The Landlord disputes this. The Tenant was unable to provide any supporting evidence for this claim.

The Landlord is seeking to claim the carpet cleaning costs of \$257.60 as shown in the Clean Zero invoice that the Landlord has provided. The Tenant has conceded this portion of the Landlord's claim.

The Landlord is seeking to claim \$4,032.00 for the replacement of all of the carpet in the rental unit. The Landlord relies on the quotation from end of the roll. The Landlord states that he has not replaced the carpet as of the date of this hearing. The Tenant states that a new Tenant began living at the rental unit immediately after they vacated the unit. The Landlord did not refute this. The Landlord states based upon the cleaning bill that, "a lot of pet spot shown and smell is serious." The Landlord states that the carpet is approximately 2 years old. The Tenant agrees to the age of the carpet. The Tenant disputes this cost. The Landlord relies on photographic evidence. The Landlord has only provided a condition inspection report for the move-in. The Landlord states that a move-out inspection was offered to the Tenant, but that he never returned to complete it. The Tenant disputes this stating that an inspection incurred as the Landlord attended at 10am during the move and conducted an inspection without filling out a report. The Landlord did not refute this.

The Landlord is seeking to claim \$75.00 for an NSF fee as stipulated in the signed tenancy agreement in clause 2. The Tenant disputes this stating that it is excessive.

Analysis

As both parties have attended the hearing and have made detailed reference to the evidence submitted, I am satisfied that both have been properly served.

Based upon the evidence submitted by the Landlord, I am satisfied that the Landlord has established a claim for the April rent of \$1,650.00. Both parties entered into a mutual agreement to end the fixed term tenancy as shown in the translated additional agreement that the Tenant has confirmed.

The Landlord has established a claim for the \$257.60 based upon the submitted receipt which the Tenant has conceded to.

I find that the Landlord did not suffer a loss as yet for the replacement of the carpet. Based upon the testimony of both parties the Landlord has yet to replace the “damaged” carpet. A new Tenant began Tenancy immediately after this Tenant. I find that the Landlord did not suffer a loss and is premature in his application. I dismiss this portion of the Landlord’s claim for \$4,032.00 with leave to reapply. If the current Tenant’s Tenancy ends within the allowed limitation period, the Landlord is free to make application. Section 60 of the Residential Tenancy Act states,

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

The Landlord has made a claim for \$75.00 for a NSF charge imposed as a result of clause 2 in the signed Tenancy Agreement. The Act provides that the maximum charge allowed for NSF charges is \$25.00. The Landlord has not provided any evidence of a loss suffered. I find this clause unconscionable and unenforceable. As such, this portion of the Landlord’s claim is dismissed.

I find that the Landlord has established a total claim for \$1,650.00 and \$257.60 for a total of \$1,907.60. As the Landlord has been partially successful in his application, I award to the Landlord recovery of ½ of the filing fee, totalling \$50.00. I order that the Landlord retain the \$1,650.00 (combined \$825.00 security and \$825.00 pet damage deposits) in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$307.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$307.60.
The Landlord may retain the security and pet damage deposits.

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 27, 2011.

Residential Tenancy Branch