



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting her to retain the security deposit and a cross-application by the tenant for an order compelling the landlord to return the security deposit.

Issue to be Decided

Which party should be awarded the security deposit?

Background and Evidence

The parties agreed that the tenancy began in April 2006 at which time a \$450.00 security deposit was paid and ended on May 31, 2011. The parties further agreed that the rental unit was new when the tenant took possession.

The landlord testified that at the end of the tenancy the tenant failed to adequately clean the rental unit or clean carpet. She testified that she had to replace blinds which had not been cleaned and were bent and that the garbage disposal and pipes leading to it had to be replaced as the disposal was not functioning and a number of small straws were found inside the pipes. The landlord further stated that she had to repaint the unit because it smelled strongly of smoke. The landlord claimed that she spent more than \$2,000.00 cleaning and repairing the unit, but is limiting her claim to the amount of the security deposit.

The tenant testified that she thoroughly cleaned the rental unit except for the carpet and stated that although the landlord's photographs showed rings in the toilet bowls, these were a feature of every home in the area due to hard water. She testified that she did not clean the carpet because the landlord had written a letter prior to the end of the tenancy in which the landlord stated, "I became aware that the carpets need to be replaced due to the damage occurring during your tenancy." The tenant testified that she did not use the garbage disposal and that it had not worked at any time throughout the tenancy. The tenant explained that the straws which had been found in the pipes

were small straws that she used to drink her coffee. She argued that it was impossible to clean the blinds because the windows were high and that the blinds bent because when the windows were open, the wind would blow the blinds, causing them to bang against the wall. The tenant argued that the landlord should not be permitted to make a claim against the security deposit because she had not performed a condition inspection of the unit either at the beginning or that the end of the tenancy. The tenant further argued that if the landlord had conducted an inspection of the unit at the end of the tenancy, she could have told the tenant what still needed to be cleaned and the tenant could have corrected the problem.

The landlord responded by saying that when she saw the carpet she had initially thought they would have to be replaced, but she found that cleaning was sufficient to return them to a reasonable state.

Analysis

First addressing the tenant's argument that the landlord's right to claim against the deposit has been extinguished, I agree that it has been extinguished as the landlord did not perform condition inspections of the unit and generate a report at the beginning and end of the tenancy. However, while the Act provides that the landlord's right to claim against the deposit is extinguished, the Act does not prohibit the landlord from making a monetary claim against the tenant and section 72(2)(b) of the Act permits the landlord to deduct a monetary award from the security deposit. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord.

Having viewed the photographs of the rental unit and taking into account the tenant's testimony that there were just 2 stains on the carpet at the outset of the tenancy, I find that the carpet was unreasonably dirty and required cleaning. If the landlord had chosen to replace the carpet, the tenant would likely have been held liable for at least part of the cost of that replacement as she caused most of the damage to the carpet. The fact that the landlord was able to successfully clean the carpet benefitted the tenant and resulted in a lower cost to her. I find that the landlord should recover the \$201.60 cost of cleaning the carpet.

I do not accept that the garbage disposal did not work throughout the tenancy. I find it unlikely that the tenant would not have brought this to the attention of the landlord as the unit was new when she moved in. The fact that the landlord found in the pipe below the disposal the type of straws that the tenant acknowledged using has persuaded me that the tenant's actions caused the disposal to malfunction and necessitated the

replacement of the disposal and the pipe. I find that the landlord should recover the \$155.68 cost of replacing the disposal and pipe.

I do not accept the tenant's argument that she should not be responsible for cleaning the blinds because of the height of the windows. The tenant is responsible for cleaning the entire interior of the rental unit. I find that the blinds were damaged as a result of the tenant leaving the blinds down while the windows were open, thereby allowing them to be bent by the wind. I find that the tenant should be held responsible for the cost of replacing the blinds. I find the replacement cost of \$288.93 to be reasonable.

Residential Tenancy Policy Guideline provides that 10 years is the useful life of blinds. I find that the tenant deprived the landlord of half of the useful life of the blinds and I find that the landlord should recover \$144.47.

The landlord limited her claim to \$450.00 which is the amount of the security deposit. I have already determined that the tenant is liable for repair and cleaning costs in the amount of \$501.75, which exceeds the amount of the security deposit and interest. It is therefore unnecessary for me to address the question of whether the tenant should be held liable for the costs of cleaning and painting the rental unit.

Conclusion

I find that the landlord is entitled to retain the security deposit. I further find that the landlord should recover the \$50.00 filing fee paid to bring her application and I grant her a monetary order under section 67 for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant's claim is dismissed.

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 22, 2011

Residential Tenancy Branch