

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing the Landlord stated that she is amending her application and is only seeking a monetary order for compensation of loss for those areas listed as the living room and master bedroom walls and the professional carpet cleaning costs and has withdrawn her request for recovery of the filing fee. The Tenant's agent has confirmed his understanding of the issues now for this hearing.

The Landlord has filed a 10 page late evidence package on October 11, 2011. The Tenant's agent disputes that this evidence should be excluded from the hearing. The Tenant's agent has confirmed receiving the late evidence package, but has not provided any reasons to exclude the evidence. The 10 pages consist of a cover page, a 1 page summary of circumstance at the end of the tenancy, a 1 page letter explaining the submission of late evidence, a 1 page invoice from G.L. for \$322.14, a 1 page copy of a invoice from Casa Lena Decor dated August 30, 2011 (previously submitted). The Landlord has also included an invoice from Casa Lena Decor for \$76.52 dated August 6, 2011, a 1 page BC Classifieds invoice for \$8.02 dated September 2, 2011, a 1 page BC Classifieds invoice for \$24.12 dated August 26, 2011, a 1 page Black Press invoice for \$68.09 for the period August 10, 2011 to September 2, 2011 and the last page is a copy of the first Black Press invoice. As the majority of evidence is in reference to costs not being sought by the Landlord and the remainder consisting of duplicate evidence and submissions, I find that this late evidence can be considered. I find no bias against the Tenant for considering the Landlord's late evidence.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the living room and master bedroom walls and the cost of a professional carpet cleaner?

Background and Evidence

This Tenancy ended by mutual agreement on August 31, 2011 as shown in the Tenant's submitted copy of the agreement. Both parties agree that the Landlord currently holds in trust a \$450.00 security deposit.

The Landlord is seeking compensation to recover \$84.00 from professional carpet cleaning as indicated in an invoice from Klean-Rite Ltd. The Landlord relies on evidence submitted on a condition of ending the tenancy. It reads, "The applicant is expected to have the carpets professionally cleaned upon vacating the premises." The Tenant's agent does not dispute this condition, but states that the Tenant's Agent, L.J.M., rented a machine to perform this clean-up himself. The Tenant's Agent states that they are unable to confirm this and are unable to provide the invoice or receipt for this rental.

The Landlord is also seeking to recover \$138.63 from the Casa Lena Decor invoice for the cost of 3 gallons of paint, \$160.00 for 8 hours of painting labour @ \$20.00 per hour for a total of \$298.63.

Both parties agree that the Tenant vacated the rental unit on August 29, 2011 and that the Landlord was requested to attend the rental premises by the Tenant to conduct a condition inspection report for the move-out on the same day.

The Landlord claims that upon her attendance at the rental unit that the Tenant refused to participate in a move-out inspection and left the premises before she could start. The Tenant disputes this stating that the Landlord attended and performed a walk through of the unit making a visual inspection without documenting anything. At the end of the visual inspection the Tenant claims that the Landlord pronounced that everything was fine and left. The Landlord relies on an incomplete condition inspection report that she states was completed in absence of the Tenant's with two witnesses that signed the report. The Tenant has submitted photographs of the rental unit at the end of tenancy.

The Landlord states that damage in the living room walls consists of paint and parts of the drywall being stripped. The Landlord states that it appeared to be like a person was scrubbing the walls and 7 areas consisting of a 2 ft. X 8 ft. strips were damaged. The Tenant's agent states that the walls were cleaned and that portions of the wall may have part of the paint removed from the cleaning.

The Landlord also states that there is a red/pink stain on 3 of the walls. The Landlord states that cleaning with TSP could not remove the stain. The Tenant's agent states

that there was some staining on 1 wall from the hanging of a red quilt/bedspread on the wall.

Analysis

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

I find that the evidence submitted by both parties (the Landlord's incomplete condition inspection report and the Tenant's photographic evidence) offer no comparative value to determine what if any damage occurred. Instead I rely on the direct testimony of both parties during the hearing. I find on a balance of probabilities that the Landlord has established a claim for some damages based upon the Tenant's testimony. I find that the Landlord is only entitled to a nominal award of \$234.00. This amount consists of the \$84.00 for professional carpet cleaning and \$150.00 for paint and labour (approximately 50% of the \$298.63 being sought by the Landlord).

As the Landlord currently holds the \$450.00 security deposit, I order that the Landlord may retain \$234.00 from this amount. The Landlord is to return the remaining \$216.00 to the Tenant.

Conclusion

The Landlord may retain \$234.00 from the \$450.00 security deposit.
The Landlord is to return the remaining \$216.00 to the Tenant forthwith.

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: October 13, 2011.

Residential Tenancy Branch