



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant applied for return of the security deposit and damage or loss under the Act, regulations or tenancy agreement. The landlord applied for damage or loss under the Act, regulation or tenancy agreement and authorization to keep the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to return of his deposit and should the deposit be doubled?
2. Has the landlord established an entitlement to compensation for damage and cleaning to the rental unit?

Background and Evidence

The following information was undisputed by the parties. The tenancy commenced July 1, 2010 and the tenant's monthly rent was \$800.00. The tenant paid \$550.00 to the landlord at the commencement of the tenancy whereby \$400.00 was recorded as a security deposit and \$150.00 as a "utility deposit". The parties participated in a move-in inspection and signed a move-in inspection report. The parties participated in a move-out inspection and signed a move-out inspection report. The move-out inspection report provides the tenant's forwarding address.

The parties were in dispute as to what date the tenancy ended. The tenant submitted that he vacated the rental unit September 23, 2011 and the move-out inspection was performed that day. The landlord submitted that the move-out inspection was performed and the report completed on September 29, 2011.

The move-out inspection report indicates the tenant agreed that the damage to the rental unit at the end of the tenancy for which the tenant is responsible for consisted of: "Living room carpet needs to be replaced and oven dirty".

In the space that provides for the amount the tenant authorizes for deductions the landlord wrote "carpet – clean kitchen". No specific amount was provided in this space; however, the landlord testified that the tenant had verbally agreed his security deposit of \$400.00 would be retained to cover these damages. With respect to the remaining \$150.00 deposit, the landlord explained that when the tenant began demanding return of the remaining \$150.00 in cash on October 12, 2011 and threatening to file an Application for Dispute Resolution the landlord consulted with the owner it was decided that the damages exceeded the \$400.00 security deposit and the landlord would apply to retain the remainder of the deposit. The landlord did not file an Application for Dispute Resolution until November 1, 2011. The landlord explained that a written carpet estimate was not received until late October 2011 which prevented her from filing an Application for Dispute Resolution sooner.

The landlord is claiming \$798.00 for carpet replacement in the living room and hallway, as per a quote obtained by a contractor, and \$60.00 for cleaning the kitchen which was paid to the landlord's mother.

The tenant acknowledged that he had spilled glue on the living room carpet and had tried patching it himself. The tenant's advocate submitted the existing carpet was likely over 10 years old and had several visible seams prior to the tenancy commencing.

The landlord submitted that the carpet was installed just prior to the previous tenancy which commenced March 1, 2008. The landlord testified that the carpet was from Home Depot and acknowledged there were seams because the rolls of carpet are only 12' wide. In 2008 the landlord hired an installer to install the Home Depot carpet whereas the estimate obtained in October 2011 was for supply and installation by a contractor.

The tenant submitted he was told by the landlord not to worry about cleaning the kitchen; otherwise, he would have cleaned it himself if he had known the landlord would charge him \$60.00. The landlord denied telling the tenant to not worry about cleaning the kitchen.

Analysis

The Act limits the type deposits a landlord may collect from a tenant to a security deposit and a pet damage deposit. The Regulations also permit a landlord to charge a refundable fee for keys. As the Act or the Regulations do not permit a landlord to charge or collect a “utility deposit” I have considered the \$550.00 payment made by the tenant at the beginning of the tenancy to be a security deposit.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain the tenant’s written consent for deductions. Section 38(4) states:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

[my emphasis added]

Section 20 of the Residential Tenancy Regulations provides for information that must be contained in an inspection report. Section 20(2) provides that the following information must be clearly distinguishable from other information on the report:

- (b) if agreed upon by the landlord and tenant,
 - (i) the amount to be deducted from the tenant's security deposit or pet damage deposit,
 - (ii) the tenant's signature indicating agreement with the deduction, and
 - (iii) the date on which the tenant signed.

[my emphasis added]

Upon review of the move-out inspection report, the parties did not record the amount that would be deducted from the security deposit. If in fact the parties had agreed that \$400.00 or \$550.00 would be deducted from the tenant’s deposit(s) I find it reasonable to expect the parties would have recorded the amount on the inspection report in the

space provided for an amount. Without an amount specified I find the landlord did not have the tenant's written consent to retain any portion of the security deposit.

Without a tenant's written consent to deduct a specific amount from the security deposit, the landlord is required to do one of two things with the security deposit in accordance with section 38(1) of the Act.

Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord loses the right to claim against the security deposit and must pay the tenant double the security deposit under section 38(6).

I find the tenancy ended and the tenant provided a forwarding address to the landlord no later than September 29, 2011 as recorded on the move-out inspection report. Since the landlord did not return the security deposit to the tenant or make an application within 15 days of September 29, 2011, the landlord violated section 38(1) of the Act and now must pay the tenant double the security deposit.

Although the tenant did not apply for return of double the entire security deposit, the Act and Residential Policy Guideline 17 provide that the security deposit must be doubled. Policy Guideline 17 provides, in part:

[T]he arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

If a landlord who does not apply for arbitration within the time required in order to retain the security deposit retains the right to apply for arbitration and subsequently applies in respect of monetary claims arising out of the tenancy and the landlord has not returned the security deposit, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

In light of the above findings, the tenant is awarded \$1,100.00 (\$550.00 x 2) and I proceed to consider the landlord's claim for damages or loss.

Residential Tenancy Regulation 21 provides for the evidentiary weight of condition inspection reports. Section 21 states:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I accept that the move-in and move-out inspection reports fairly represent the condition of the rental unit at the beginning and end of the tenancy since they are signed by the tenant who acknowledged, in writing, that the reports were fair. At the time of move-in cigarette burns are noted on the living room carpet and the carpet is listed in fair condition. At the end of the tenancy the carpet is described as being destroyed and in need of replacement.

Based upon the inspection reports, I accept that the living room carpet requires replacement; however, I find the landlord's claims for full replacement cost unreasonable when I consider the carpet was in "fair" condition at the beginning of the tenancy and had cigarette burns at that time. I find the tenant's verbal submission that the carpets were older did not satisfy me the carpets were beyond their useful life when I consider the landlord's detailed account of when the carpets had been purchased and installed. Therefore, considering the carpet was described as being in fair condition with cigarette burns at the beginning of the tenancy I find a reasonable award is approximately one-half of the replacement cost and I award the landlord \$400.00 for carpet damage.

The move-out inspection report also satisfies me that the tenant left the oven, fridge and other parts of the kitchen dirty. I find the tenant's submission that the landlord agreed to cover the cost of kitchen cleaning unlikely especially when I consider the tenant agreed he was responsible for kitchen cleaning on the move-out inspection report. I find the landlord's \$60.00 claim to be reasonable and I award that amount to the landlord.

Given the landlord's relative success in this application I award the landlord \$30.00 towards the filing fee paid by the landlord. Therefore, the landlord has been awarded a total of \$490.00 [\$400.00 carpet damage + \$60.00 cleaning + \$30.00 filing fee].

The landlord's award is offset against the tenant's award, pursuant to section 72 of the Act, and I order the landlord to pay the tenant \$610.00 [\$1,100.00 – \$490.00]. I provide the tenant with a Monetary Order in the net amount of \$610.00 to serve upon the landlord and enforce as necessary.

Conclusion

The tenant was awarded \$1,100.00 and the landlord was awarded \$490.00. The awards have been offset and the tenant has been provided a Monetary Order in the net amount of \$610.00 to serve and enforce against the landlord.

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: November 18, 2011.

Residential Tenancy Branch