

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application to keep all or part of the security deposit and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on March 1st, 2010. The rent was \$1020.00 per month and the tenant paid a security deposit of \$510.00.

The landlord's agent testified that the tenancy ended on September 30th, 2011, and that a condition inspection was completed on that day. She said that the carpet was professionally cleaned, and that the landlord verbally notifies all tenants in the complex that this is done at the end of every tenancy.

The landlord's agent stated that the units required minor touch up throughout the unit to cover nail holes from pictures and minor scratches.

In her documentary evidence, the landlord's agent provided a copy of the move-in and move-out reports. The move-out portion states that the walls need \$100.00 for touch up paint, and that the landlord charges \$100.00 for carpet cleaning. The landlord's agent stated that the landlord retained \$200.00 from the tenant's security deposit.

The tenant argued that he spent two hours cleaning the carpet. He stated that he also covered nails and anchor holes in the walls caused by picture frames, and that there was no damage beyond reasonable wear and tear. He said that he did not agree with the move-out inspection report and refused to sign it

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 32 of the *Residential Tenancy Act* provides in part that; a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; and that a tenant must repair damage to the rental unit or common areas by the actions or neglect of the tenant.

The landlord's claim was supported by condition inspection reports completed at the start and the end of the tenancy; however they are of limited value since the move-out portion does not provide sufficient detail to specify whether the carpet cleaning and the touch-up paint was caused by the tenant's actions or neglect; nor do they specify damage that was beyond reasonable wear and tear. Since I must consider reasonable

wear and tear as a factor, the reports do not allow me to determine the degree of difference between the condition of the unit when the tenant moved in and when he moved out, and to assess damages that are beyond reasonable wear and tear. It is expected that tenants will hang pictures and as such holes related to normal decor are not considered damage unless they are large or excessive. There was also no evidence of staining or damage to the carpet and landlords' compensation for loss associated with wear and tear is expected to be recovered when assessing rent. The tenant stated that he made sure the carpet was clean, and took steps to cover holes in the walls caused by picture frames. The landlord has not proven on a balance of probabilities that the tenant violated the Act and therefore I dismiss this application.

Conclusion

The landlord's application is dismissed and I order the return of the balance of the security deposit. Pursuant to Section 67 of the Act, I grant the tenant a monetary order for \$200.00. This Order may be registered 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: January 11, 2012.

Residential Tenancy Branch