



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit site or property, to keep all or part of the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, Regulation, and or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed they entered into a written fixed term tenancy agreement that began on June 15, 2011 and was set to switch to a month to month tenancy after May 30, 2012. Rent was payable on the first of each month in the amount of \$1,525.00 and on May 11, 2011 the Tenant paid \$762.50 as the security deposit and \$40.00 as a key FOB deposit. The Tenant attended both the move in and move out inspection reports and confirmed that she signed the reports on approximately June 22, 2011 and on September 28, 2011. The Landlord issued a partial refund of the security deposit in the amount of \$245.27 on September 30, 2011 which the Tenant has received and cashed.

The Landlord is seeking to recover the cost of carpet cleaning in the amount of \$95.20, plus \$72.83 of accumulated unpaid rent as per the tenant ledger provided in their evidence, plus \$300.00 liquidated damages as provided in their tenancy agreement. The Landlord advised the Tenant would have been served a document in mid September 2011 explaining how her unit needed to be cleaned in preparation for the

move out inspection and that this document would have informed the Tenant that she was required to have the carpets professionally cleaned.

The Tenant agreed to pay the \$300.00 liquidated damages charge however she disputes the \$72.83 in accumulated unpaid rent and the \$95.20 for carpet cleaning. The Tenant argued that the carpet was professionally cleaned by the Landlord in June 2011, prior to the onset of her tenancy, and again in July 2011 because the stains were not removed. She then cleaned the carpet herself in either July or August 2011 and her tenancy ended in September 2011 so there was not need to have the carpets cleaned again. As for the \$72.83 claimed for accumulated amounts she disputes how this amount was calculated. She confirmed she did not submit evidence to support her argument and stated that she simply disputes how the amount was calculated.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things copies of the move-in and move out inspection report form, the residential tenancy agreement, Canada Post receipts, a cheque stub dated September 30, 2011 indicating a partial security deposit refund of \$245.27, and a copy of the tenant ledger.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The *Residential Tenancy Policy Guideline # 1* provides that generally at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

After careful consideration of the aforementioned I have considered that the tenancy agreement does not stipulate that the Tenant must have the carpets professionally cleaned at the end of the tenancy, there is no evidence to support what the move out instructions stated, that the carpets were cleaned three times during this tenancy which was only 2 ½ months long, and there is no indication on the move out inspection report that the carpets were dirty or stained requiring professional cleaning. Accordingly, I find there to be insufficient evidence to prove the Tenant has breached the tenancy agreement or section 37(2) of the Act and I dismiss the Landlord's claim of \$95.20 for carpet cleaning.

Section 26 of the Act provides that a Tenant must pay rent when it is due in accordance with the tenancy agreement. I accept the evidence before me that the Tenant had an accumulated balance of fees and normal accounting processes would have any payments, such as rent, applied to previous unpaid balances which in this case would leave a balance owing for unpaid rent in the amount of \$72.83. In absence of evidence to the contrary, I accept the tenant ledger as evidence of the amount due. Accordingly I award the Landlord **\$72.83** in unpaid rent.

The evidence supports that the tenancy agreement provided for liquidated damages of \$300.00 and the Tenant agreed to pay this amount. Accordingly I award the Landlord **\$300.00** for liquidated damages.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Accumulated unpaid rent	\$72.83
Liquidated Damages	300.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 422.83
LESS: \$762.50 + \$40.00 key FOB + Interest 0.00	
Minus refund \$245.27	<u>-557.23</u>
Offset amount due to the Tenant	<u>\$134.40</u>

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$134.40**. This Order is legally binding and must be served upon 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: January 05, 2012.

Residential Tenancy Branch