

DECISION

Dispute Codes OPB, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord is seeking an order of possession because the Tenant has breached an agreement with the Landlord, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. The Tenant is seeking the return of double 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 it was clarified by the Landlord that an order of possession was not being sought as the Tenant has vacated the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage?

Is the Landlord entitled to keep all or part of the pet damage and security deposits?

Is the Tenant entitled to return of double the pet damage and security deposits?

Background and Evidence

This Tenancy began on June 15, 2009 and ended on September 30, 2011. A security deposit of \$925.00 was paid, consisting of \$300.00 for the pet damage deposit and \$625.00 for the security deposit. The Tenant has submitted a copy of the receipt issued by the Tenant displaying this. Both parties state that there is a signed tenancy agreement, but neither party has submitted a copy of it. No condition inspection report for the move-in or move-out was made. The Tenant stated in her direct testimony that their forwarding address in writing was given to the Landlord on October 20, 2011.

The Landlord has made a monetary claim for \$1,347.16. The Landlord is seeking \$717.16 for the cost of replacing the carpets in 2 of the bedrooms. The Landlord states that the carpet is approximately 4 ½ years old. The Landlord states that the carpets upon inspection at the end of tenancy had burn and stain marks. The Landlord relies on photographs taken that have been submitted as evidence. The Tenant disputes this

stating that she is unaware of the bedroom carpets being referenced. The Landlord is seeking recovery of \$79.28 for the replacement of locks because the Tenant failed to return 3 out of 5 keys given to the Tenant at the beginning of the Tenancy. The Tenant disputes that 5 keys were given and states that 2 keys were given and were both returned to the Landlord. The Landlord is seeking recovery of \$52.28 a carbon monoxide/smoke detector that was missing from the rental unit. The Tenant disputes this stating that there was no detector and that the Tenants removed the only detector which belong to her. The Landlord is seeking recovery of \$112.34 for paint because of 64 nail holes that were left and filled and painted by the Landlord. The Tenant disagrees with this stating that she is unaware of the holes. The Landlord is seeking recovery of \$25.83 for the replacement of 7 electrical outlets and faceplates. The Tenant disputes any damage for the outlets. The Landlord states that 6 outlets were replaced with used spares. The Landlord relies on the incomplete condition inspection report for the move-out and the photographs submitted into evidence. The Landlord has submitted no invoices or receipts for any of the costs claimed. The Landlord seeks recovery of \$360.00 for 36 hours of labour at \$10.00 per hour which was performed by the Landlords. The Landlord has provided no accounting or details of the claimed amount or hours.

Analysis

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

Tenant's application for the return of double the security deposit has not been established. The Tenancy ended on September 30, 2011 and the Tenant provided the Landlord with the forwarding address in writing on October 20, 2011 and filed for dispute on October 19, 2011. Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Tenant's application for the return of double the pet damage and security deposit is dismissed.

I prefer the evidence of the Landlord over that of the Tenant. On a balance of probabilities, I find that the Landlord has established that damage has occurred from this Tenancy. Unfortunately, the Landlord has failed to provide any evidence of

monetary loss for the costs incurred. As such, I find that the Landlord is entitled to a nominal award. I grant the Landlord a nominal award of \$600.00. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain \$650.00 from the \$925.00 currently held in trust and that the remainder of \$275.00 be returned to the Tenant.

Conclusion

The Tenant's application for the return of double the security deposit is dismissed. The Landlord may retain \$650.00 from the \$925.00 pet damage and security deposits. The Tenant is granted a monetary order for the return of the \$275.00 balance held by 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 10, 2012.

Residential Tenancy Branch