



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit – Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 14, 2008 and ended on November 30, 2011. The Landlord collected \$600.00 for a security deposit at the onset of the tenancy. A move-in inspection was conducted between the Parties and a condition inspection report was filled out and provided as evidence for the Hearing. On November 28, 2011, the Landlord and a second agent of the Landlord attended with the Tenant and completed a move-out inspection however, the condition report does not note any damages to the unit. On the same date as the move-out inspection, the Parties signed an agreement for the Landlord to retain the amount of \$95.20 for carpet cleaning as an agreed amount

to be deducted from the security deposit. IT is noted that a work order for that date shows \$95.20 for carpet cleaning and repairs to the unit.

The Landlord states that they were pressured to agree to only carpet cleaning damages to the unit at move-out and that after the agreement, the unit was examined more closely and it was discovered that the carped required more cleaning and more repairs were necessary. On December 5, 2011, the Lanldord made the application to claim for the extra costs however, on January 9, 2012, the Lanldord returned \$508.42 of the security deposit to the Tenant. The Landlord claims \$120.00 for cleaning the unit and \$140.00 for repairs to the unit. An invoice for the cleaning was provided as evidence however, no invoice for the repairs was provided. Photos of the unit taken on November 28, 2011 were provided as evidence.

Analysis

Section 38 of the Act provides that a landlord may retain an amount from a security deposit if at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability of the tenant. Given the evidence of damages to the unit contained in the agreement on the security deposit, the evidence that the Landlord returned a remaining amount of the security deposit to the Tenant, and considering that the damages being now claimed are not noted on a move-out condition report or contained in the agreement with the Tenant I find that the Landlord has not substantiated on a balance of probabilities a claim for damages beyond anything more than what was agreed to with the Tenant at the time of the mutual move-out condition inspection. Although the Landlord states that they were pressured into agreeing to retain only an amount for carpet cleaning, I do not find this argument feasible either given that two agents were present during the move-out inspection and the agreement reached with the Tenant and further that the Landlord returned the remainder of the security deposit to the Tenant after making the claim to retain more against the security deposit. Accordingly, I dismiss the application of the Landlord.

Conclusion

The application of the Landlord is dismissed.

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: February 14, 2012.
