



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damages?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on November 01, 2005 and ended on October 31, 2011. The tenants paid a monthly rent for this unit of \$775.00 which was due on the first day of each month. The tenants paid a security deposit of \$342.50 on October 18, 2005. Both Parties attended the move in and move out

condition inspection and the landlord received the tenants forwarding address by telephone, which they have used to serve the tenants with their application, approximately 10 days after the tenants vacated.

The landlord testifies that although the tenants did attend the move out condition inspection of the unit the tenants refused to sign the report as they did not agree to the landlords comments. The landlord has not provided a copy of either inspection report in evidence. The landlord testifies that as they did not have the tenants forwarding address at that time they could not forward a copy of the move out inspection report to the tenants and to date have still not provided the tenants with a copy of the inspection report.

The landlord testifies that the tenants did not clean the carpets at the end of the tenancy. The carpets were left in a soiled condition and the landlords testify that they paid \$140.00 to have the carpets cleaned. This money was taken from petty cash by the caretaker and the invoice provided by the landlord for this cost was to reimburse the money to the caretaker. The landlord agrees they have not provided the carpet cleaning receipt for this work.

The landlord testifies that the tenants left the unit in an unclean condition at the end of the tenancy. The caretaker testifies that prior to the tenants moving out she had given them a cleaning list however none of the items on this list had been cleaned. The caretaker for the property testifies that she cleaned the unit particularly the kitchen cupboards, the stove, the bathroom and toilet, all surfaces, including window sills, the shelves in the entrance closet, wiped down the walls and removed doodles from the walls. The caretaker testifies that this work took her four hours and she charges the landlord \$20.00 per hour. The landlord seeks to recover the sum of \$80.00 for this work.

The landlord testifies that the tenants were required to clean the drapes at the end of their tenancy but the drapes were left in a soiled condition. The landlord seeks to recover the sum of \$40.00 for cleaning the drapes themselves.

The tenant attending testifies that they did not sign the move out condition inspection report because they did not agree with the landlords comments. The tenant testifies that the caretaker told her that she would be deducting \$60.00 for half the cost of cleaning the carpets. The tenant testifies that two to three weeks later she received a letter from the landlord in which the landlord had changed their mind about this deduction and now wanted to keep \$260.00 from their security deposit. The tenant testifies that she did not authorise the landlord to make any deductions from their security deposit.

The tenant disputes that the carpets were left soiled. The tenant disputes that the drapes were their responsibility. The tenant testifies that approximately two years ago the landlords changed the drapes in their unit and the ones the landlords put up were too short and were already soiled. The tenant also disputes the landlord's testimony that the unit was left in an unclean manner. The tenant states she cleaned the unit for two days before they moved out and everything was left in a clean condition. The tenant testifies that the only area which was not clean was a bathroom wall which had mould on it. The tenant testifies that there was a leak in the bathroom which the landlord had been informed off but never repaired and moulds grow as a result of this leak. The tenant testifies that the caretaker said the walls would be painted. The tenant testifies that the unit was left in a better condition then it was when they moved into the unit in 2005. The tenant testifies that when they did the move out inspection the caretaker said that everything was fine in the unit and it was not till later that the caretaker changed her mind.

The landlord disputes the tenant's testimony and states they would not tell a tenant they would only have to pay for half a carpet cleaning. The tenants are told they have to either have the carpets cleaned themselves and provided a receipt for the work or the cost of the cleaning will be deducted from the tenants' security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has not provided a copy of the Move in or Move out condition inspection reports in evidence and also failed to send a copy of the Move out report to the tenants after they received the tenants forwarding address. The landlords have also provided no photographic evidence to show that the damage or loss exists; the landlord have insufficient corroborating evidence to show the tenants left the rental unit in an unclean condition or that the carpets and drapes were left soiled and the landlords have not provided an original receipt for the carpet cleaning to show that the carpets were professionally cleaned by the landlord.

Consequently due to a lack of corroborating evidence I find the landlord has not met the burden of proof in this matter and their application for damages and to keep the tenants security deposit cannot succeed.

As the landlords have been unsuccessful with their claim I find the landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The landlords must return the security deposit of \$342.50 plus accrued interest of \$12.12 to the tenants and a monetary Order has been issued to the tenants for the sum of **\$354.62**.

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 15, 2012.

Residential Tenancy Branch