



Dispute Resolution Services

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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.

The Landlord and Tenant were each 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 October 15, 2010 and ended on January 31, 2012. A security deposit of \$700.00 was taken by the Landlord at the onset of the tenancy. A move-in inspection was conducted between the Parties on October 12, 2010 and a move-out inspection was completed by the Parties on February 2, 2012. The Tenant did not agree with the move-out claims and noted this on the form setting out the deductions.

The Landlord states that the Tenant left the unit unclean and damaged as indicated by the photo evidence provided by the Landlord. The Landlord states that the Tenant did not return the keys to the unit until February 2, 2012 and claims \$96.55 for over holding. The Tenant states that the unit was empty on January 31, 2012 and that the Landlord was not available to take the keys until February 2, 2012 at the time of the move-out

inspection. The Tenant states that because the Landlord was not available to take the keys on January 31, 2012, the Tenant remained in the unit overnight. The Landlord did not dispute that the Landlord was not available to take the keys from the Tenant.

The Landlord states that the carpets were unclean and claims \$140.00 for the cleaning costs. An invoice was provided for this cost. The Tenant states that the Parties agreed at move-in that the Tenant would provide new carpets for the unit at no cost to the Landlord as the carpets in the unit at move-in were old and worn. The Tenant states that these carpets were installed a year before the move-out and that they had been cleaned approximately two months before the move-out. The Tenant has no invoice or receipt for the carpet cleaning. The Tenant states that the current tenant has informed the Tenants that the new carpets are still in the unit. The Landlord did not dispute the Tenant's evidence on the replacement of carpets but notes that this is not generally acceptable as the carpets were replaced by different colors and designed carpets. The Landlord does not make any claim in relation to the replaced carpets.

The Landlord states that the unit was unclean at move-out and claims \$120.00 in costs. An invoice and photos of the unit were provided by the Landlord. The Landlord also claims \$24.00 for cleaning supplies however no invoice or receipt for this cost has been provided. The Tenant states that the unit was cleaned at move-out to a better state than at move-in and that the photos do not show any problems. The Tenant notes that the bathroom tub was problematic at move-in and that this was never repaired by the Landlord's through-out the tenancy despite requests by the Tenant.

The Landlord states that the walls of the unit were damaged and claims the amount of \$150.00 for repairs. The Landlord provided photos of the walls of the unit claimed as damaged. The Tenant states that the damages shown in the photos are damages that existed at move-in and that the unit was not painted at move-in. The Tenant states that the Landlord was called several times to repair the walls but that no repairs occurred. The Tenant states that at move-in the Tenant did not know that photos should have been taken to prove the move-in condition and was not familiar with the process of the

move-in inspection. The Tenant further states that photo #4 does not identify the wall or door of the unit being claimed and the Tenant has no idea what this photo is of. The Tenant states that the tenancy was ended by the Tenant due to the poor maintenance, upkeep and repairs provided by the Landlord during the tenancy.

Analysis

Section 37 of the Act provides that when a tenancy vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

As the Tenant disputed the cleaning at the move-out inspection and at the Hearing, and considering the photo evidence of the condition of the unit in relation to the cleaning, I find that the Landlord has not substantiated that the Tenant left the unit or carpets unclean and I dismiss this part of the claim, including the costs for cleaning supplies. It is noted that the Landlord did not call its Witness, the cleaner, in relation to this claim. As the Tenant disputed the damages at move-out and at the Hearing stated that the damages to the walls were pre-existing damages and considering that the Landlord did not dispute the Tenant's statements in relation to the requests for repairs to the unit following the move-in, I find that the Landlord has failed to substantiate on a balance of probabilities that the damages claimed were caused by the Tenants and I dismiss this part of the claim.

Given the undisputed evidence that the Landlord was not available to take the keys until February 2, 2012, I find that the Landlord has not substantiated that the Tenant caused any loss for the Landlord in relation to rent and I dismiss the Landlord's claim for two days rent.

As the Landlord has been unsuccessful with its claim, I decline to make an order in relation to the filing fee. I order the Landlord to return the security deposit plus interest of \$700.00 to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$700.00**. If necessary, this order may be filed 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: April 16, 2012.

Residential Tenancy Branch