



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order for damage to the unit; to keep all or part of the security and pet damage deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for a Monetary Order for the return of double the amount of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of. Pursuant to a written agreement, the fixed term tenancy started on June 1, 2010 and ended on. The rent was \$2100.00 per month and the tenant paid a security deposit of \$1050.00 and a pet damage deposit of \$525.00 for a deposit totalling \$1575.00.

The landlord testified that the parties mutually agreed to end the tenancy on February 15, 2012. The landlord stated that on that day, the tenant had not completely vacated or cleaned the unit, and that she did not pursue completing a walk-through inspection. She referred to the condition inspection report completed at the start of the tenancy to show that the carpet was in good condition.

The landlord submitted an invoice of \$328.08 for carpet cleaning, and an estimate of \$1208.65 to replace the carpet for a monetary claim totalling \$1536.75. In her documentary evidence, the landlord provided 2 photographs showing the frayed and torn portions of the carpet. Concerning the repairs, the landlord provided copies of text messages showing that the tenant acknowledged the damage. The landlord also provided a copy of the carpet cleaning invoice which also states that in addition to the rips, the carpet also smelled with urine. The landlord said that the carpet was approximately 9 years old.

The tenant did not dispute the damage; she disputed that replacing the whole carpet is not justified. She provided a copy of a receipt showing that she rented a carpet shampooer and that she cleaned the carpet. She testified that she found options where the ripped areas could be repaired, but that the landlord wanted complete replacement. Concerning pet urine, the tenant said that she did not notice any smell.

Turning to the tenant's application for double the return of the security deposit; the tenant testified that she gave the landlord her forwarding address in writing on February 15, 2012. The landlord countered that this never happened. The tenant stated that she

had a witness, but that the witness was at work and not available for the hearing. The tenant did not provide a copy of the written notice.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not necessarily met. In this matter that burden was on the landlord to prove her claim against the tenant.

Despite the absence of a move-out inspection report, there was no dispute that the carpet rips occurred during the tenancy. Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The *Residential Policy Guidelines* provide an estimated useful life for various items; in the case of carpeting that useful life is 10 years. I note that the landlord's invoice from the carpet cleaners estimated the carpet as over 10 years. That is not to say that every 10 year old carpet necessarily needs replacement. However, the landlord has not proven that the carpet was irreparably damaged and since it already expended much of its useful life, I grant the landlord a nominal award of \$300.00 for repairs.

Concerning urine smell; based on the evidence I find it more likely that urine smell prevailed and I award the landlord this aspect of her claim for \$328.08.

Turning to the tenant's claim for the return of double the amount of the security deposit; in this case the tenant had the burden to prove that she gave the landlord written notice of her forwarding address on February 15, 2012. The tenant did not provide supporting

evidence, such as a copy of the notice; nor did the tenant's witness attend the hearing. In the absence of more substantive evidence the tenant has not proven, on a balance of probabilities, that she served the landlord in accordance with the Act and the tenant's application is therefore dismissed.

Conclusion

The landlord established a claim of \$628.08. The landlord kept the tenant's \$1575.00 security deposit. Pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the tenant's security deposit and grant the tenant a monetary order for the balance of \$946.92.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

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: May 23, 2012.

Residential Tenancy Branch