

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord states that the Tenant was served with the notice of hearing and evidence package by Canada Post Registered Mail on May 8, 2012 as shown by the submitted Canada Post Customer Receipt. The Tenant submitted no documentary evidence. As both parties have attended and have acknowledged receiving the documentary evidence submitted, I am satisfied that both have been properly served with the notice of hearing and evidence package as deemed under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on July 1, 2009 on a fixed term tenancy and then thereafter on a month to month basis as shown by the submitted signed tenancy agreement. A security deposit of \$405.00 was paid.

The Landlord seeks a monetary order for \$945.14 consisting of \$855.14 for May 2012 lost rent and \$90.00 for carpet cleaning costs.

The Landlord states that the Tenant gave notice to end tenancy March 30, 2012, which was received by the Landlord on April 2, 2012. The Tenant disputes this stating that the notice was left in the dropbox on March 31, 2012. The Landlord claims that staff visited the rental property and collected everything during the March 31, 2012 – April 1, 2012 weekend, but did not receive the notice until April 2, 2012.

The Landlord states that a letter dated April 4, 2012 was sent to the Tenant regarding the late notice letter dated March 30, 2012 (received April 2, 2012) from the Tenant. The Tenant states that he did not receive this letter, but did receive a telephone call from the Landlord on April 2, 2012 regarding the late notice to vacate. Both parties agree that the Tenant contacted the Landlord on May 2, 2012 to return the rental unit keys and to have a condition inspection report. The Tenant claims that he vacated the rental unit on April 30, 2012. The Landlord states that it was assumed on their part since no further communication was received from the Tenant that the Tenancy would continue.

The Landlord seeks the \$90.00 for carpet cleaning costs. The Landlord states that the Tenant approved this cost as noted on the condition inspection report for the move-out. The Tenant stated in his direct testimony that he would only accept this cost if the carpet was cleaned and not replaced. The Landlord stated that the carpet was cleaned and kept for the next Tenant.

Analysis

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as they have made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The Landlord has failed to mitigate any possible losses for the May 2012 rent. The Landlord has provided a letter dated April 4, 2012 to the Tenant regarding the Tenant's notice to vacate. The Landlord has not provided sufficient evidence that any type of mitigation was done to prevent this loss. This portion of the Landlord's claim is dismissed.

The Landlord has established a claim for the \$90.00 in carpet cleaning costs. The Tenant admitted in his direct testimony that the carpet was dirty and needed cleaning as noted on the condition inspection report for the move-out. The carpet was cleaned for a new Tenant and not replaced as stated in the Landlord's direct testimony.

I order that the Landlord retain \$115.00, consisting of \$90.00 for carpet cleaning and \$25.00 for partial recovery of the filing fee from the security deposit of \$405.00 in satisfaction of this claim. The Landlord is to return the remaining \$290.00 in accordance with the Residential Tenancy Act.

Conclusion

The Landlord may retain \$115.00 from the \$405.00 security deposit.
The Landlord must return the remaining \$290.00 security deposit in accordance with the Residential Tenancy Act.

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: July 03, 2012.

Residential Tenancy Branch