



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This matter was originally heard on June 18, 2012. No decision was rendered at that time and the matter was reheard today by way of conference call in response to the landlords 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 tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 22, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord agent and a witness for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to keep the tenants security deposit?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The landlord's agent testifies that this month to month tenancy started on September 01, 2004 and ended on March 31, 2012. Rent for this unit was \$778.00 and was due on the first day of each month. The tenant paid a security deposit of \$325.00 on September 01, 2004. The parties attended a move in and a move out inspection of the unit and the tenant gave the landlord a forwarding address in writing on April 1, 2012 on the move out inspection report. The tenant did not agree with the landlords comments on the move out report and documented on the report that he agreed to clean the unit but was informed not to.

The landlord's agent testifies that the tenant failed to clean the unit at the end of the tenancy. This work was completed by subcontractors over five hours and has been charged to the tenant at \$20.00 per hour to a total sum of \$100.00.

The landlord's agent testifies that the tenant failed to clean the carpets at the end of the tenancy. This unit is a two bedroom town house and the landlord had to get contractors in to the unit to clean the carpets. The tenant was aware that the carpets must be professional cleaned at the end of the tenancy as it is documented in the tenancy agreement. The tenant was made aware that a charge of \$150.00 is applied for carpet cleaning if the tenant does not do this work themselves.

The landlord's agent testifies that the tenant failed to leave the drapes in a clean condition at the end of the tenancy. The landlord's agent testifies that this work was done either on site or offsite by subcontractors. The landlord seeks to recover \$30.00 to clean the drapes.

The landlord's witness, who is the caretaker for the building, testifies that the tenant had painted a planetary scene on the ceiling of one of the bedrooms. This ceiling was not returned to its original paint at the end of the tenancy. The landlords witness testifies that the walls in the unit had also been painted by the tenant and the tenant had painted some windowsills, doorframes and moulding black. This work was not corrected at the end of the tenancy and the landlord had to prep and paint the unit and seeks to recover the sum of \$800.00 for this work.

The landlords witness testifies that the tenant removed a carpet in one of the bedrooms and a friend of the tenants laid a wooden floor incorrectly. This floor had to be removed after the tenant moved out and new carpet installed. The landlord seeks to recover the sum of \$250.00 for the new carpet.

The landlords witness testifies the tenant did not repair a door which had a fist sized hole in it. The door had to be replaced and the landlord seeks to recover the sum of \$90.00 for this work. The landlords witness testifies that the door actually cost \$82.00.

The landlords witness testifies that the tenant moved out late. The tenant informed the landlords witness that the tenant was going to get some friends to come and help the tenant clean the unit. The landlords witness states he told the tenant he would need to do this quickly as the new tenants were going to move in. The landlords witness testifies that the tenant did not return for a couple of days and by that time the landlords had had the unit cleaned.

The landlord has provided a copy if the move in and out inspection report detailing the cleaning required, but with limited information concerning the painting, the damage to the door and the removal of the carpet in the bedroom, The landlord has provided some photographic evidence showing pictures of the wooden floor, garbage in an outside area, closet doors off their mountings, a bedroom carpet, the kitchen area and the planetary paint scene.

Analysis

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.

It is my decision that the landlord has not fully met the test for damages. The landlord has provided some supporting evidence to show the tenant failed to leave the rental unit clean at the end of the tenancy and that the tenant removed a carpet and painted a ceiling with a planetary scene. However, the landlord has provided no evidence to show the actual amount required to rectify the damage and insufficient evidence to determine all of the damage claimed was caused by the tenant.

Consequently the landlord has not met the test for damage or loss claims and as a result the landlords claim is denied.

As the landlords claim for damages has been denied the landlord is not entitled to keep the security deposit and the security deposit must be returned to the tenant.

Conclusion

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

I HEREBY Order the landlord to return the tenants security deposit of \$325.00 within five days of receiving this decision. The tenant has been issued with a Monetary Order to the sum of **\$325.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: July 31, 2012.

Residential Tenancy Branch

