



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for compensation for liquidated damages, carpet cleaning costs; and, authority to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord testified that the tenant was provided the hearing documents and the landlord's evidence by way of two registered mail packages sent to the tenant at his forwarding address. The forwarding address was provided by the tenant, in writing, prior to the end of tenancy. The landlord provided two registered mail tracking numbers as evidence of service. I was satisfied the tenant has been served with the hearing documents and evidence in a manner that complies with the Act and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to receive liquidated damages from the tenant?
2. Is the landlord entitled to recover carpet cleaning costs from the tenant?
3. Is the landlord entitled or authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced April 1, 2012 for a fixed term set to expire February 2013. The tenant paid a security deposit of \$535.00. The tenant gave notice to the landlord on April 30, 2012 that he intended to vacate the rental unit May 31, 2012. The parties scheduled, in writing, a move-out inspection for May 31, 2012 at 10:00 a.m. The landlord attended the unit and the tenant was not present. The landlord proceeded to post a Notice of Final Opportunity to Schedule a Condition Inspection on the tenant's door for an inspection to take place June 5, 2012. On June 5, 2012 the landlord attended the unit at the scheduled time and proceeded to inspect the unit without the tenant present.

The landlord testified that on June 19, 2012 the landlord filed this application and sent the inspection report to the tenant along with the hearing documents.

The landlord is seeking to recover liquidated damages of \$500.00 and \$100.74 for carpet cleaning.

The landlord provided a copy of the tenancy agreement that provides for a liquidated damages clause in the amount of \$500.00 as a pre-estimate of costs to re-rent the unit that is payable if the tenant ends the tenancy during the fixed term.

With respect to carpet cleaning, the condition inspection report provided as evidence includes a comment that there was a stain on the carpet at the beginning of the tenancy; however, there are no comments that the carpeting was excessively soiled or had additional stains after this brief tenancy.

The landlord submitted that it is the landlord's policy to clean the carpets after every tenancy, regardless of the duration of the tenancy. The landlord provided copies of receipts for cleaning the carpet on June 11, 2012 and September 15, 2011. The landlord testified that the unit was vacant between September 2011 and April 2012.

The tenancy agreement provides a clause with respect to carpet and window covering cleaning. It reads:

15. The tenant agrees that at the end of this tenancy agreement, for whatever reason, the tenant must pay the landlord any costs associated with the professional cleaning of any carpets, drapes & window coverings supplied by the landlord.

Documentary evidence provided for this proceeding included the following: the tenancy agreement, the tenant's notice to vacate, the vacating tenant information sheet completed by the tenant, the Notice of Final Opportunity to Schedule a Condition Inspection, the condition inspect reports, and, carpet cleaning receipts.

Analysis

Upon review of the evidence provided to me, I am satisfied the tenant did not participate in the move-out inspection that was scheduled in accordance with the Act and Regulations. The Act provides that if a tenant does not participate in the scheduled inspection the tenant's right to return of the security deposit is extinguished. In this case, I find the tenant extinguished his right to return of the security deposit. Having found the tenant extinguished his right to the security deposit I find the landlord was not required to file an application claiming against the security deposit within 15 days of the tenancy ending. Thus, the security deposit is not doubled. However, the security

deposit will be used to offset the landlord's claims for compensation to reflect the landlord's actual losses after taking into account the security deposit.

Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$500.00 from the tenant.

While I am satisfied the landlord incurred a cost to clean the carpets, the fact the landlord incurred a cost does not in itself create an obligation for the tenant under the Act. Rather, the landlord must establish that the cost was incurred due to a violation of the Act, regulations or tenancy agreement by the tenant.

The carpet cleaning term of the tenancy agreement provides that the tenant is responsible for paying for professional carpet cleaning costs incurred by the landlord for whatever reason. The term does not provide any exemption from this requirement even if the reason is attributable to an unforeseen event such as a fire or flood in the building or due to the negligence of the landlord or another tenant. Clearly, such damage or soiling would not otherwise be the tenant's responsibility under the Act yet if the term were found to be enforceable the tenant may be held responsible for such costs. Therefore, I find this term is oppressive and grossly unfair to the tenant.

A term that is oppressive or grossly unfair to one party is an unconscionable term, as defined in the Residential Tenancy Regulations. Unconscionable terms are not enforceable pursuant to section 6 of the Act. As such, I do not hold the tenant responsible for the carpet cleaning cost because of the term in the tenancy agreement.

In light of the above, I hold the tenant responsible for cleaning and damage to the extent provided by the Act. A tenant is required to leave a rental unit reasonably clean at the end of a tenancy. Residential Tenancy Policy Guideline 1 provides that a tenant is generally held responsible for carpet cleaning if the tenancy exceeded one year, or if the tenancy was less than one year but the carpeting was excessively soiled, the tenant had a pet or smoked in the unit. Based upon the evidence presented to me, I find these circumstances do not apply in this case.

Finally, I have been provided with a condition inspection report that indicates that the carpeting "requires cleaning" in every carpeted room. However, the inspection report

indicates it was stained at the beginning of the tenancy and no additional comments are made with respect to additional stains or soiling at the end of the tenancy. Considering the tenancy was only two months in duration, the condition inspection report makes no indication that the carpets were left more stained or dirty beyond normal wear and tear I find it more likely than not that the inspection report indicated the carpets needed cleaning because it is the landlord's policy to clean them after every tenancy. Again, the landlord's policy does not create an obligation for the tenant under the Act.

For the reasons provided above, I find the landlord has not established an entitlement to recover carpet cleaning costs from the tenant.

Given the landlord's relative success with this application I award the landlord recovery of \$35.00 of the filing fee paid for this application.

The landlord has established an entitlement to compensation totalling \$535.00 which is completely offset the amount of the security deposit in the landlord's possession. Therefore, I do not provide a Monetary Order to the landlord with this decision.

Conclusion

The tenant's security deposit has offset the amounts awarded to the landlord. As no balance remains outstanding I do not provide a Monetary Order to the landlord.

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: August 24, 2012.

Residential Tenancy Branch