



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 as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, authority to keep all or part of the security deposit, and to recover the filing fee.

The tenant, an advocate for the tenant, the landlord, and a witness for the landlord appeared at the teleconference hearing and gave affirmed testimony. The parties confirmed that they received evidence from the other party prior to the hearing and had the opportunity to review the evidence prior to the hearing.

During the hearing both parties were given the opportunity to provide oral testimony and speak to their evidence. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary Matter

During the hearing, the parties considered a mutually settled agreement, however, the landlord decided to withdraw her agreement, and as a result, a mutually settled agreement was not ultimately possible in resolving this dispute. Given the above, the parties were advised that I would determine the merits of the landlord's claim in this written decision.

Issues to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property under the *Act*?
- What should happen to the security deposit under the *Act*?

Background and Evidence

A fixed term tenancy agreement began on August 1, 2011 and expired on July 31, 2012. Monthly rent in the amount of \$1,500.00 was due on the first date of each month. The tenant paid a security deposit of \$750.00 at the start of the tenancy. The tenant vacated the rental unit on July 24, 2012.

The landlord has submitted a monetary claim for \$1,443.68.00 consisting of the following:

Suite cleaning	\$182.56
Carpet cleaning	\$280.00
Repair broken cabinet	\$52.64
Repair stained glass window frame	\$58.24
Repair chipped paint	\$30.24
Carpet stain	\$90.00
Loss of half of month's rent	\$750.00
TOTAL	\$1,443.68

The landlord's witness testified regarding the carpet cleaning. The witness for the landlord stated that the rental unit was approximately 600 square feet and consisted of three rooms or areas to carpet clean. The rental of the carpet cleaning machine was \$100.00 which included the cleaning product, and the witness estimates that he spent approximately one hour in each of the three rooms cleaning the carpets.

The tenant stated that the invoice produced by the witness and provided as evidence for the hearing, was the first time she had seen the invoice. The tenant alleged that the witness was a former boyfriend of the landlord. The witness stated that he has stayed with the landlord as a guest, however, provides work with receipts to the landlord as required and has been a building manager for approximately five years. The tenant states that she was introduced to the witness as the landlord's "boyfriend".

Both parties dispute the scheduling of a move-out condition inspection. The landlord provided a letter which says the inspection will be "by July 31st", 2012. The landlord stated that perhaps that was her error due to a problem with the English language, however, the tenant disputes that a specific day was ever set for a move-out condition

inspection. The tenant stated that she did not receive a request verbally or in writing from the landlord to attend on a specific day or time for an inspection.

The parties agree that the tenant vacated the rental unit on July 24, 2012. The landlord stated that she performed a move-out condition inspection report on her own on July 24, 2012. The landlord testified that all of the repairs being claimed were fixed in five days after they were started.

The landlord was asked to explain her \$90.00 claim for a carpet stain. The landlord testified that she felt she was entitled to compensation for damage to the carpet which consisted of a stain. The tenant was asked for her response to the landlord's claims and the tenant responded that the landlord's claim was accurate except for the claim for the carpet stain and half a month's rent. The tenant was confused as to what the landlord was claiming \$90.00 for regarding the carpet stain.

The landlord is also seeking \$750.00 comprised of half of a month's rent due to the repairs that were required to the rental unit, and her alleged inability to rent the rental unit until the middle of August 2012. The landlord testified that she started showing the rental unit on July 13, 2012. The tenant disputed the claim for half a month's rent as she vacated the rental unit early enough for all the work to be completed.

The tenant admitted to damaging the stained glass window frame during the hearing. The landlord is seeking \$58.24 for that portion of her claim.

Analysis

Based on the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Claim for suite cleaning and carpet cleaning – The tenant did not dispute the \$280.00 cost of carpet cleaning and \$182.56 cost for suite cleaning. Based on the undisputed testimony of the landlord, the invoice, and the photo evidence, **I find** the landlord has established a claim of **\$462.56** comprised of \$280.00 for carpet cleaning and \$182.56 for suite cleaning.

Claim for cabinet and stained glass window frame repair – The tenant did not dispute the \$52.64 cost of repairing the broken cabinet handle and \$58.24 cost for repairing the stained glass window frame. Based on the undisputed testimony of the landlord, the invoice, and the photo evidence, **I find** the landlord has established a claim of **\$110.88** comprised of \$52.64 to repair the broken cabinet handle and \$58.24 to repair the stained glass window frame.

Claim for repair of chipped paint – The tenant did not dispute the \$30.24 cost of repairing the chipped paint. Based on the undisputed testimony of the landlord, the invoice, and the photo evidence, **I find** the landlord has established a claim of **\$30.24** to repair the chipped paint.

Claim for carpet stain – The landlord was vague about how she arrived at the value of \$90.00 for an alleged carpet stain. The landlord provided a witness who was also vague. The landlord and witness felt that they were entitled to compensation for damage to the carpet in a value of \$90.00 but did not provide any evidence to support where that amount came from. There was no quote for carpet repair or other corroborating evidence to support this claim. The tenant was also confused how the amount of this claim was arrived at. The onus of proof to support their claim rests on the landlords in this matter. **I find** the landlord has failed to provide sufficient evidence to

support her claim. Therefore, **I dismiss** this portion of her claim **without leave to reapply**, due to insufficient evidence.

Claim for half of a month's rent – The parties agreed that the tenant vacated the rental unit on July 24, 2012. The landlord testified that the repairs to the rental unit took 5 days to complete. Based on the landlord's testimony, the repairs could have been completed by July 29, 2012. The landlord is seeking \$750.00 as compensation as she alleges she could not rent the rental unit until the middle of August 2012. The landlord failed to provide any evidence that the rental unit could not be rented until the middle of August 2012, and by her own testimony, contradicts herself by stating that the repairs only took 5 days to complete and that the tenant vacated on July 24, 2012 and she began to show the rental unit on July 13, 2012. **I find** the landlord has failed to provide sufficient evidence to support her claim. Therefore, **I dismiss** this portion of her claim **without leave to reapply**, due to insufficient evidence.

As the landlord was partially successful in her application, **I grant** the landlord the recovery of half of the filing fee in the amount of **\$25.00**.

The landlord continues to hold the tenant's security deposit of \$750.00, which has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$628.68** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Suite cleaning and carpet cleaning	\$462.56
Repairs to cabinet and stained glass window frame	\$110.88
Repair to chipped paint	\$30.24
Half of filing fee	\$25.00
Subtotal	\$628.68
Less security deposit	(\$750.00)
BALANCE OWING TO TENANT	(\$121.32)

I order the landlord to return the balance of the security deposit in the amount of **\$121.32** to the tenant within 15 days of receiving this Decision. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$121.32**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court, should the landlord fail to comply with my order to return the balance of the security deposit.

Conclusion

I find that the landlord has established a total monetary claim of **\$628.68**. I authorize the landlord to retain \$628.68 of the \$750.00 security deposit in full satisfaction of the claim, and I grant the tenant a monetary order under section 67 for the balance due to the tenant in the amount of **\$121.32**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 23, 2012

Residential Tenancy Branch