



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's 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 tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security ad pet deposits?

Background and Evidence

The parties agree that this month to month tenancy started on April 01, 2011 and ended on September 30, 2012. Rent for this unit was \$675.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$337.50 and a pet deposit

of \$200.00 on March 26, 2011. The parties also agree that the landlord did not complete either a move in or a move out condition inspection report at the start and end of the tenancy. The tenant gave the landlord her forwarding address in writing on September 30, 2012.

The landlord testifies that the tenant's dog caused damage to a set of blinds. The landlord has provided a photograph of this damage. The landlord agrees the tenant provided a new set of blinds but as they did not match the other blinds the landlord did not want to put them up. The landlord has provided documentary evidence as to the replacement costs for the blinds of \$214.00 plus HST.

The landlord testifies that the tenant did not replace a damaged screen at the end of the tenancy. The landlord testifies that it appears as if the tenant's dog has damaged this screen as it is on the same window as the damaged blind and the tenant would leave this window open for the dog. The landlord testifies that it appears as if when the dog was biting the blinds and they were pushed into the screen causing the screen mesh to tear. The landlord has provided photographic evidence of the damage to the screen and documentary evidence for the replacement cost of \$14.58 plus HST.

The landlord testifies that the carpet in the unit was in good condition at the start of the tenancy and did not have any stains. At the end of the tenancy the carpet was left with many stains all over it. The tenant did not have the carpet professionally cleaned nor did the tenant use a proper cleaning machine to clean the carpets. The landlord testifies the tenant poured water over the carpets and then brushed this with a mop. This water has damaged the back of the carpet and has caused more staining due to this. The landlord testifies the carpet is 12 feet X 12 feet and the cheapest replacement carpet is \$249.12 plus tax. The landlord has provided photographic evidence of the stained carpet and documentary evidence for the replacement costs. The landlord testifies that he has not tried to clean the carpet himself due to the damage on the back of the carpet.

The landlord also seeks to recover the labour costs to fit a new carpet and has estimated this to be \$500.00. The landlord has provided no documentary evidence to show the actual costs to fit the new carpet.

The landlord seeks to keep the tenants security and pet deposit in partial satisfaction of his claim and seeks to recover the filing fee paid for this proceeding.

The tenant disputes the landlords claim for replacement blinds. The tenant testifies that she did purchase replacement blinds for the window as the tenant agrees her dog did damage the blinds. The tenant testifies that these blinds cost \$107.00 however when the landlord started to fit them he throw them to the ground and would not use them as the landlord said they were different blinds.

The tenant disputes the landlords claim for the replacement screen. The tenant testifies that she did not damage this screen and suggests it was done when someone stole her bike which was located by the screen.

The tenant disputes the landlords claim for new carpets. The tenant testifies that when she moved into the unit the carpet had some stains. At the end of the tenancy the tenant testifies that she cleaned the carpets with her own carpet cleaning machine and the stains could not be removed. The tenant agrees she used a wet mop to clean the carpets and then sucked the water out.

The tenant testifies that she has not given the landlord permission to keep all or part of her security or pet deposits and does not waive her right to recover double the security and pet deposits.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

The tenant agrees that her dog did damage the blinds; however, disputes the landlords claim on the basis that the tenant brought replacement blinds which the landlord refused to fit. It is my decision that the landlord was entitled to refuse the blinds purchased by the tenant as they did not match the existing blinds in the home. When a tenant is responsible for damage to the blinds then the tenant must replace these with the same blinds. As there is a large cost difference between the blinds the tenant purchased and the one the landlord purchased I find it is likely that the tenants blinds were not the same as the other blinds in the unit and therefore the landlord was not obligated to use

them. As such I find the landlord has established his claim for replacement blinds to the sum of **\$214.00** plus HST of **\$25.68**.

With regards to the landlords claim for a replacement window screen; I find it is likely that the screen was damaged by the tenants dog and therefore find in favour of the landlords claim. The landlord is entitled to recover the sum of **\$14.58** plus HST of **\$1.74**.

With regards to the landlords claim for carpet replacement and labour costs to fit the new carpet; I find the landlord has not met the burden of proof that the carpet was not stained at the start of the tenancy. The tenant has disputed the landlords claim by stating that there were stains at the start of the tenancy. When a landlord has not completed a move in condition inspection report in accordance with s. 23 of the *Act* then the landlord has no conclusive evidence to show that the carpets were not stained at the start of the tenancy or that the tenant is responsible for stains at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. Consequently without further conclusive evidence to show the tenant is responsible for staining the carpets I must dismiss this section of the landlords claim for replacement carpet and labour costs.

With regards to the landlords claim to keep the security and pet deposits; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the

security and pet deposits then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposits to the tenant.

I also refer the parties to s. 23(4) and 35(3) of the *Act* that require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security and pet deposits has been extinguished the landlord is not entitled to file a claim to keep the security or pet deposits and if the deposits have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlords their forwarding address in writing the landlords must pay double the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on September 30, 2012. As a result, the landlord had until October 15, 2012 to return the tenants security and pet deposit. I find the landlord did not return the security deposit or pet deposit and has extinguished his right to file a claim to keep them. Therefore, even though the tenant has not applied for double the security and pet deposit, I am required to order that the landlord must pay double the amount of the security and pet deposit to the tenant to the sum of **\$1,075.00**.

I find however, that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$256.00** from the tenants' security and pet deposit to compensate him for proven damages.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following sum:

Replacement blind	\$239.68
Replacement screen	\$16.32
Filing fee	\$50.00
Amount due to the landlord	\$306.00
Double the Security and pet deposits	\$1,075.00
Amount due to the tenant	\$769.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord has been awarded the sum of **\$306.00**. This sum has been offset against the tenant's monetary award.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$769.00**. 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: January 14, 2013

Residential Tenancy Branch

