



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

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

Both parties attended the hearing in person and gave testimony. The Landlord has submitted documentary evidence which the Tenant has confirmed receiving. The Tenant has not provided any documentary evidence. As both parties have attended and have confirmed receipt of the submitted evidence, I am satisfied that both parties have been properly served.

After 1 hour and 45 minutes, the hearing was adjourned for both a lack of time and that the sign interpreter had to leave. The hearing was re-convened to continue on December 11, 2012.

After 2 hours and 10 minutes, the hearing was adjourned again for lack of time and that the sign interpreter had to leave. The hearing was reconvened to continue on January 22, 2013.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (ie. Photographs, postage, etc.) are dismissed.

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

Both parties agreed that the Tenancy began on April 1, 2010 on a fixed term tenancy ending on March 31, 2011 and then thereafter on a month to month basis. The monthly rent at the end of the Tenancy was \$750.00 payable on the 1st of each month and a security deposit of \$350.00 and a pet damage deposit of \$100.00 was paid on February 21, 2010. Both parties agreed that the Tenant vacated the rental unit on June 30, 2012. A condition inspection report was completed at the beginning of the Tenancy on April 1, 2010 for the move-in by both parties. During the hearing the Landlord stated that the move-in report was changed by her to include aspects of the move-out report that was not completed by both parties.

The Landlord seeks a monetary claim of \$491.66. The Landlord claims that after the Tenant vacated, the rental unit required cleaning and that there was damage to the unit. The claim consist of \$151.00 for carpet cleaning of stains left, advertising costs of \$97.13 (\$43.68 for Times paper advertising and \$53.45 for MR news paper advertising for July 2012), wall and window cleaning supplies of \$8.12, replacement of a stained toilet seat for \$16.78, \$33.60 for the dry cleaning of the drapes, \$35.03 for the replacement of stove elements, \$50.00 for stove damage and the Landlord's labour for cleaning and repairs of \$100.00.

The Landlord relies on photographic and direct testimony as their evidence. The Tenant disputes the Landlord's claims and states that the unit was left clean and that the remaining issues brought forward by the Landlord are due to normal wear and tear. The Landlord disputes this and refers to the photographs which show damage to the stove top. The Landlord has provided a copy of the condition inspection report made at the move-in on April 1, 2010 which notes the condition of the rental unit at the beginning as opposed to the photographs taken at the end of the tenancy.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find on a balance of probabilities that the Landlord has reasonably satisfied me that the rental unit was left in a less than ideal state that is beyond that considered to be normal wear and tear. The Tenant argues that the damage claimed by the Landlord was due to normal wear and tear. Residential Tenancy Branch Policy Guideline #1 states that "normal wear and tear" to be,

"Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

I find that I cannot rely on the Landlord's submitted condition inspection report as admitted by them that the report for the move-out was changed after the Tenant left. However, based upon the photographic evidence submitted, it is clear that there are carpet stains. The invoice by Able Home Services for 151.00 in conjunction with this material, I find that the Landlord has established a claim for carpet cleaning of \$151.00.

On the Landlord's claim for advertising costs of \$97.13 (\$43.68 for Times paper advertising and \$53.45 for MR news paper advertising for July 2012), I find that the Landlord failed to establish a claim. Both parties agreed that poor communication resulted at the end of the Tenancy. The Landlord claims that they tried to text, phone or provide written notice to try and re-show the rental unit with no responses from the Tenant. This was disputed by the Tenant. The Landlord stated in their direct testimony that they did not follow through with the showings. This portion of the Landlord's claim is dismissed.

The Landlord seeks \$50.00 for damage to the stove for burn marks on the stove. The Tenant has disputed this claim. The Landlord has provided testimony that the stove top was eventually cleaned and new stove element trays were purchased. I find that the Landlord's claim for the \$50.00 to be without merit. The Landlord has not provided sufficient evidence to show how this cost was incurred by the Landlord. This portion of the claim is dismissed.

On the remaining portions of the Landlord's claims, I find on a balance of probabilities that the Landlord has provided sufficient evidence of cleaning required, the photograph of a stained toilet and other parts of the rental and the rust/burn of the stove elements. In conjunction with the Landlord's testimony, witness testimony, invoices and bills and the photographic evidence submitted, I find that the home was left dirty and damaged. I find the Landlord's monetary claim for \$100.00 for 4 hours of cleaning at \$25.00 to be excessive. The Landlords equate themselves to the rate set by professionals.

However, as damage and cleaning throughout has been established, I award a reasonable amount to the Landlord \$60.00 (4 hours at \$15.00) for cleaning labour. The Landlord is also entitled to the \$8.12 cleaning supplies, \$16.78 for the replacement of the stained toilet seat, \$33.60 for the drapery cleaning and \$35.03 for the stove element tray replacements.

The Landlord has established a total monetary claim of \$304.53. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain \$354.53 from the \$450.00 combined security and pet damage deposits. The Landlord must return the \$145.47 difference to the Tenant. The Tenant is granted a monetary order for \$145.47. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord may keep \$354.53 from the combined security and pet damage deposits. The Tenant is granted a monetary order for \$145.47.

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 28, 2013

Residential Tenancy Branch

