



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This was an application by the landlord under the *Residential Tenancy Act* (the Act) for a monetary order for damage to the rental unit and compensation for loss, and to retain the security deposit in partial satisfaction of all monetary claims, inclusive of the filing fee for this application.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damages or loss?

Background and Evidence

I have benefit of a tenancy agreement document signed by both parties subsequent to the start of the tenancy. I accept the tenant is in possession of a copy of that agreement and I accept the landlord's evidence respecting the contents of page 2 of that agreement.

The undisputed and relevant testimony in this matter is that the tenancy ended October 29, 2012. The landlord currently holds the security deposit in trust – in the amount of \$362.50. The parties both received a Decision of the Director dated October 24, 2012 in which the landlord was granted a Monetary Order in the amount of \$1500.00 (File No. ____). At the end of the tenancy the parties conducted a mutual move out inspection. The parties agree that the carpeting in the unit was required to be professionally cleaned at the end of the tenancy as stipulated in the tenancy agreement; and, that the tenancy agreement also states that late payments of rent are subject to an administrative fee of \$25 per occurrence. The landlord claims that the carpeting was not professionally cleaned as required, and that the tenant has yet to satisfy the rent owed for September and October 2012, of which was the subject of the October 24, 2012 Decision of the Director. The landlord claims 2 late fees in the amount of \$25.00.

The tenant agrees that the carpeting was not professionally cleaned; but rather, the carpeting was cleaned by an acquaintance using a rented carpet cleaner – for which they provided the tenant a hand-written receipt in the amount of \$64.86. The landlord is claiming \$84.00; however, I do not have benefit of a receipt in this amount from the landlord.

The landlord and tenant agree that the tenant has not satisfied any portion of the \$1500.00 monetary Order granted the landlord and dated October 24, 2012. The landlord seeks to retain any residual amount of the security deposit in accordance with Section 38(3)(a)(b) of the Act.

Analysis

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In this matter the landlord bears the burden of proof. On the face of the evidence, and in the absence of a receipt for the claimed carpet cleaning verifying the actual amount required to compensate the landlord, I find the landlord has not met the above test. However, the landlord has provided sufficient evidence to support their claim for late fees. As a result of the above, I **dismiss** the landlord's claim for carpet cleaning for lack

of sufficient evidence, *without leave to reapply*. I allow the landlord's claim for late fees in the amount of **\$50.00**, *without leave to reapply*.

On the face of the evidence from both parties, I find the landlord is entitled to retain the balance of the security deposit – in accordance with my calculations - in partial satisfaction of an amount previously ordered the tenant to pay the landlord which remains unpaid.

As the landlord has been partially successful in their claim, I grant the landlord the filing fee of **\$50.00**.

The security deposit in this matter will be offset from the award made herein.

Calculation for Monetary Order

Late fee X 2	50.00
Filing Fees for the cost of this application	50.00
Less Security Deposit	-362.50
<i>Security Deposit balance to landlord per Section 38(3)(a)(b) of the Act</i>	262.50
<i>Residual amount owing to landlord of October 24, 2012 Monetary Order</i>	\$1237.50

Conclusion

I Order that the landlord retain the security deposit in its entirety amount of \$362.50 in satisfaction of their claim. The landlord is at liberty to enforce the previously awarded Monetary Order to the residual amount.

This Decision is final and binding on both parties.

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*.

Residential Tenancy Branch

