



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?
Should the landlord be authorized to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began sometime in or about 2004 and ended on August 1, 2012. The parties were involved in a previous dispute for which a hearing was held on November 20, 2012, resulted in the tenant being awarded double her security deposit.

The landlord claims \$541.50, which is one half of one month's rent, the \$261.52 cost of a cleaning performed in May 2011 and the \$110.89 cost of carpet cleaning in October 2012.

The landlord testified that when the tenant ended the tenancy, she was in the midst of a fixed term which set the end of the tenancy at October 31, 2012. The landlord first testified that she was claiming one half a month's rent because the tenant had broken the lease, claiming that payment of such an amount was a standard in the industry. When I asked the landlord whether there was a provision in the tenancy agreement which provided for a payment in the event that the tenant ended the tenancy prior to the end of the fixed term, the landlord stated that there was no such provision. The landlord then testified that she had not been able to re-rent the unit for almost 2 months and that the half month's rent claimed was designed to compensate her for lost income.

The tenant acknowledged that there was a fixed term in place and testified that in each of the 8 years of her tenancy she had signed a new fixed term tenancy agreement. She testified that when she gave her notice to end her tenancy on August 1, 2012, the landlord accepted the notice and returned to her the post-dated cheques which had been given to cover rent for the balance of the term.

The landlord testified that in May 2011, the tenant complained about mould in the bathroom so the landlord arranged for a cleaning company to attend at the rental unit to clean the affected area. The cleaning company charged \$261.52 to the landlord to clean and re-caulk and advised that the stains from the mould could not be removed. When asked whether she had communicated to the tenant at the time that the tenant would be responsible for the professional cleaning charge, the landlord replied that it was the tenant's responsibility.

The tenant testified that the stains in question had been in the bathroom throughout the tenancy but she did not realize that they were caused by mould until 2011, at which time she asked the landlord to arrange for it to be cleaned.

The landlord testified that the carpets were not adequately cleaned by the tenant at the end of the tenancy. The landlord acknowledged that she had not conducted a condition inspection of the unit with the tenant at the end of the tenancy, claiming that the tenant had already vacated by the time the landlord arrived. When asked why the carpets were not cleaned until almost one month after new occupants had moved into the rental unit, the landlord replied that she handed over managerial responsibilities to a property management company that made the decision.

The tenant testified that she had the carpets professionally cleaned at the end of the tenancy.

The landlord also seeks recovery of the \$50.00 filing fee paid to bring her application.

Analysis

As the security deposit was already addressed in the November 20, 2012 decision, I dismiss that claim.

The landlord appears to be under the mistaken apprehension that when a party breaches a fixed term tenancy, some specific damage award automatically flows from that breach. While it is possible for such a provision to be written into a tenancy agreement under specific circumstances, the *Residential Tenancy Act* does not provide for an automatic award.

When I advised the landlord that there is no automatic award under the Act, she re-characterized her claim as loss of income. However, in order to establish a claim for loss of income, the landlord must provide evidence not just that the rental unit was empty for a certain period, but that she attempted to minimize her loss by making reasonable attempts to secure new tenants. The landlord provided no evidence in this regard.

In the absence of evidence showing the landlord's attempt to mitigate her losses, I find that the landlord has not proven that she is entitled to an award for loss of income or for the breach of the fixed term and I dismiss her claim for \$541.50

The landlord acknowledged that she arranged for professional cleaning to be done in May 2011 at the request of the tenant. Although the parties were in communication at that time regarding the tenant's desire to have more extensive work done, the landlord specifically denied that request of the tenant's and paid for the professional cleaning without at any time advising the tenant that she was responsible for that cleaning. I find that as the landlord had no prior agreement with the tenant that the cost of cleaning would be borne by the tenant and as the landlord offered payment with no communication to the tenant that the landlord was not responsible, the landlord cannot now visit liability for that cost on the tenant. I therefore dismiss the claim for \$261.52 for cleaning.

Although the landlord claimed that the carpets were not sufficiently clean at the end of the tenancy, she provided no evidence to corroborate her claim that this was the case and there is no move out inspection to show the condition of the carpets at the end of the tenancy. The carpets were cleaned after new tenants had moved into the rental unit and I am not satisfied that the carpet cleaning was required as a result of the tenant's failure to clean as it could just as easily have been required because of some event which occurred during the subsequent tenancy. I therefore dismiss the claim for \$110.89 for carpet cleaning costs.

As the landlord has been wholly unsuccessful, I decline to order the recovery of the filing fee paid to bring her application.

Conclusion

The landlord's claim is dismissed in its entirety.

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: March 08, 2013

Residential Tenancy Branch

