



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on November 29, 2013 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on March 1, 2013 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Landlord’s legal counsel requested an adjournment as counsel had only been retained today and the Landlord could provide better evidence in the form of photos and invoices. Noting that the Hearing had already been adjourned at the Landlord’s request from March 6, 2013 and that the Landlord made its application in November 2012, I found that the Landlord had sufficient time to submit photos and

invoices from the time of the Landlord's application to this Hearing date and I refused the adjournment.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on August 25, 2012 and ended on November 25, 2012. Rent of \$550.00 was payable monthly and at the outset of the tenancy the Landlord collected \$275 as a security deposit and \$100.00 as a key deposit.

The Landlord states that the Tenant left the unit damaged and unclean and failed to return the keys to the unit. The Landlord provided a photo of the living room area and claims as follows:

- \$105.00 cost for cleaning the carpets and floors. The Landlord states that the carpets that cover the entire unit were stained;
- \$90.00 cost for cleaning to the unit. The Landlord was unsure whether the cleaning took 3 or 4 hours and no invoice was available; and
- \$95.00 cost of rekeying the unit.

The Tenant states that the unit was clean and undamaged at the end of the tenancy, that the Landlord agreed at the end of the tenancy that the unit had no damages, and that the Landlord agreed to immediately return the full damage deposit to the Tenant. The Tenant states that the Landlord did not provide a copy of a move-out inspection report to the Tenant. The Tenant provided photos of the unit at move-out including photos of the inspection report. The Tenant states that during the tenancy the unit was flooded by the washing machine that was only used by the Landlord and that the Tenant tried to clean the carpet area affected. The Tenant does not deny that the keys to the

unit were not returned however the Tenant questions the cost and whether or not any cost was even incurred given the lack of an invoice. The Tenant provided videos of the Landlord's statements and promises in relation to the state of the unit at the end of the tenancy and the return of the security deposit.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the Tenant's video evidence of the Landlord acknowledging that the unit was undamaged at move-out, and considering the Tenant's undisputed evidence that the carpet was damaged during the tenancy by a flood caused by the Landlord, I find that the Landlord has not substantiated that the Tenant caused any damages to the carpet and I dismiss the Landlord's claim for carpet cleaning. Given the undisputed evidence that the Tenant failed to return the keys, considering that the cost claimed to rekey the unit is reasonable and in line with the deposit taken for the keys, and accepting the Landlord's oral evidence that this cost was incurred, I find that the Landlord is entitled to **\$95.00**. Given the Tenant's photo evidence of the move-out report, I find that the unit was not as clean as stated by the Tenant. Given that the Landlord did not supply an invoice and considering the size of the unit, I find that the Landlord is entitled to a reasonable sum of **\$50.00** for cleaning the unit. As both Parties have achieved some success with their applications, I decline to award recovery of either Party's filing fee.

I order the Landlord to deduct **\$145.00** from the combined security and key deposit plus zero interest of **\$375.00** and return the remaining **\$230.00** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of \$145.00 from the security and key deposit of \$375.00 in full satisfaction of the claim.

I grant the Tenant a monetary order under Section 67 of the Act for **\$230.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: June 4, 2013

Residential Tenancy Branch