



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent

The landlord provided documentary evidence the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on May 17, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning; for liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on October 25, 2012 for a 1 year fixed term tenancy beginning on November 1, 2012 for a monthly rent of \$1,250.00 due on the 1st of each month with a security deposit of \$625.00 paid.

The tenancy agreement stipulated that should the tenant end the tenancy prior to the end of the fixed term the tenant will be required to pay the landlord liquidated damages in the amount of \$625.00. The tenancy ended on April 30, 2013 after the tenant gave the landlord notice of her intention to end the tenancy.

The landlord has submitted a Condition Inspection Report signed by the tenant as agreeing to allow the landlord to retain the security deposit and that she owed the landlord for the liquid damages in the amount of \$625.00 and for carpet cleaning in the amount of \$106.40. The landlord also provided a document entitled "Security Deposit Refund" that the tenant refused to sign.

The Report also confirms the tenant did not clean carpets in the unit contrary to Section 27 of the tenancy agreement requiring the tenant to have the carpets professionally cleaned at the end of the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount of to pay a liability or obligation of the tenant. As such, I find the landlord has established the tenant has authorized the landlord to retain \$625.00 from the security deposit as noted for liquidated damages.

I also accept the tenant acknowledge the carpets had not been professionally cleaned by signing the Condition Inspection Report and because the cost of cleaning raises the amount owed to the landlord over and above the amount held by security deposit I find the landlord is entitled to compensation in the amount of \$106.40.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$781.40** comprised of \$625.00 liquidated damages; \$106.40 carpet cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$625.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$156.40**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 16, 2013

Residential Tenancy Branch

