



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and an order to retain portion of the security deposit in full satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served in person on November 14, 2014, by the concierge of the building.

I find that the tenant has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in full satisfaction of the claim?

Background and Evidence

The tenancy began on September 7, 2013. Rent in the amount of \$2,600.00 was payable on the first of each month. A security deposit of \$1,300.00 was paid by the tenant. The tenancy ended on October 31, 2013.

The landlord's agent stated that they have retained the amount of \$180.00 from the tenant's security deposit and they have returned the amount of \$1,120.00 to the tenant by e-transfer on November 12, 2013. The landlord's agent stated they seek to retain the amount they withheld in full satisfaction of the claim.

Filed in evidence is a copy of a move-in and move-out condition inspection report which was signed by the parties.

The landlord claims as follows:

a.	Carpet cleaning and cleaning	\$180.00
	Total claimed	\$180.00

The landlord's agent testified that tenant did not clean the carpet at the end of the tenancy and the kitchen, mirrors, and bathroom counters were required to be cleaned. The agent stated they seek to recover the amount of \$180.00 that they paid for cleaning. Filed in evidence are photographs. Filed in evidence is a receipt.

Filed in evidence is a copy of the move-out condition inspection report indicated that the above items were not cleaned; however, the tenant disagreed, and stated that the kitchen, mirrors in the washroom, and counters were thoroughly cleaned. The tenant did not deny in the move-out condition inspection report that the carpets were not cleaned.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the tenancy exceeded one year, and photographic evidence supports that the tenant did not clean the carpet as required. Further, the photographic evidence also supports that the kitchen and bathroom required additional cleaning. As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the carpets, kitchen and bathroom. Therefore, I find the landlord is entitled to compensation for the cost of having these items cleaned in the amount of **\$180.00**.

I find that the landlord has established a total monetary claim of **\$180.00** comprised of the above described amount.

In this case, the tenant paid a security deposit of \$1,300.00, the landlord returned the amount of \$1,120.00. I order that the landlord retain the balance of the security deposit of **\$180.00** in full satisfaction of the claim.

Conclusion

The landlord is granted a monetary award and may keep the balance held of the security deposit in full satisfaction of the claim.

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: February 27, 2014

Residential Tenancy Branch

