



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JORDAN DEVELOPMENT CORPORATION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep all or part of the security and pet damage deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; for damage to the rental suite; and to recover the filing fee from the Tenant for the cost of the Application.

Two agents for the Landlord (“JB” and “JM”) and the Tenant appeared for the hearing and no issues were raised by any of the parties in relation to the service of the hearing documents and evidence in accordance with the Act and the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed the evidence and testimony before me; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for damage to the rental unit and loss under the Act, regulation and tenancy agreement?
- Is the Landlord entitled to keep a portion of the Tenant’s security deposit in full satisfaction of the Landlord’s claim?

Background and Evidence

Both parties agreed that this tenancy started on July 1, 2012 for a fixed term of one year after which the tenancy reverted to a month to month basis. A written tenancy

agreement was completed and the Tenant paid the Landlord a security deposit in the amount of \$467.50 on June 7, 2012, which the Landlord still retains.

The Tenant vacated the rental unit on December 31, 2013 after giving written notice to end the tenancy on December 2, 2013. Before the tenancy ended, rent was payable by the Tenant to the Landlord in the amount of \$940.00 (after a rent increase during the tenancy) which was due on the first day of each month.

At the start of the tenancy the Landlord and Tenant completed a move in condition inspection report on June 25, 2012 and a move out condition inspection report on December 31, 2013; the report was provided as evidence for this hearing and contained the Tenant's forwarding address. The Tenant signed the move out condition inspection report to the effect that he disagreed with the comments recorded by the Landlord.

The Landlord's claim for damages to the rental suite comprises of the following amounts supported by the following evidence.

- **\$135.00 for the cleaning of the rental suite.**

JM testified that the Tenant had failed to reasonably clean the rental suite at the end of the tenancy which included: dirty kitchen cabinet doors, dirty kitchen floors, a dusty lamp shade, dirty drapes, dirty tiles in the bathroom, dirty windows and ledges and a dirty patio. JM testified that the Tenant had been provided with a list of items that had to be cleaned before the ending of the tenancy which the Tenant failed to reasonably clean.

JM referred to the condition inspection report which indicates the items that were not cleaned, which were marked with a "C" which denotes on the report as "Needs Cleaning". The Landlord provided some photographs which indicate dirty kitchen cabinetry in support of the cleaning required as well as an invoice which shows the list of the cleaning performed in the amount of \$135.00.

The Tenant disputes the rental suite needed cleaning and submits that this was reasonable wear and tear. The Tenant provided eight photographs which he claimed showed the rental suite was left clean at the end of the tenancy. However, some of the photographs were blurred including the one taken of the lamp and one photo shows some food staining on the kitchen cupboard. JM also drew my attention to one of the Tenant's photographs which indicates the patio was dirty. The Tenant also submitted a breach letter that had been issued to him by the Landlords for the way in which the patio

was being cleaned by the Tenant which was causing disturbance to other residents. The Tenant submits that this is evidence that he cleaned the patio on a regular basis.

- **\$57.75 for professional cleaning of the carpet.**

JB drew my attention to Section 23 of the tenancy agreement which states that "...if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy". JM testified that the Tenant had not professionally cleaned the carpets and provided an invoice for the cleaning of the carpets in the amount of \$57.75.

The Tenant testified that he did not have the carpets professionally cleaned at the end of the tenancy because the Landlord told him not to do it because the Landlords have the carpets professionally cleaned at the end of the tenancy in any case. The Tenant testified that he had family members who are in the carpet cleaning business who would have cleaned the carpet had he not been instructed to not clean them by the Landlord.

JM submitted that the Tenant was told that they routinely have the carpets professionally cleaned at the end of the tenancy but denied that the Tenant was told not to clean the carpets.

- **\$75.00 for monetary compensation for carpet staining.**

JM testified that the Tenant had left a coffee stain in the living room carpet for which he provided a photograph for and which was recorded on the condition inspection report. JM testified that this stain could not be removed and therefore claims \$75.00 in the reduction of the value of the carpet this stain had caused.

The Tenant disputed this claim and stated that he did not clean this because the Landlord told him not to clean the carpets. The Tenant submits that this stain could have been easily removed by professionally cleaners and questioned why the Landlord sought to make two claims in relation to the carpet cleaning.

Analysis

Firstly, I find that the Landlord made the Application to keep the Tenant's security deposit within the time limits stipulated by Section 38(1) of the Act.

In my analysis of the evidence presented by the parties during this hearing, I have considered the following provisions and I have based my findings on the evidence as a

whole on the balance of probabilities, rather than focusing on one particular aspect of the evidence.

- A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:
 1. That the other party violated the Act, regulations, or tenancy agreement;
 2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
 3. The value of the loss; and,
 4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

- Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.
- Section 37(2) of the Act requires a Tenant to leave a rental suite at the end of the tenancy reasonably clean and undamaged except for reasonable wear and tear.
- Policy Guideline 1 to the Act details the responsibility of both the Landlords and Tenants for residential premises. In relation to carpets, the guideline explains that generally, at the end of the tenancy, the Tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.
- In dispute resolution proceedings, Section 21 of The Residential Tenancy Regulation states that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the

inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

By using the above provisions I have made the following determination of the Landlord's monetary claim for damages as follows:

In relation to the cleaning costs, I find that on the balance of probabilities, the Landlord is entitled to these costs in the amount of **\$135.00** claimed. This is based on the items that required cleaning which were recorded on the condition inspection report which were consistent with the cleaning completed on the invoice provided as evidence for this cost. Furthermore, I find that the Tenant's photographic evidence is unreliable as some of the photos were blurry and two of the Tenant's photographs indicate that cleaning had not been done.

I also find that the Tenant's evidence of cleaning that was required on the kitchen cabinets and the patio area is not reasonable wear and tear and that the Tenant's evidence in relation to him keeping the patio clean only supports a claim that the patio was cleaned *during* the tenancy and this is not evidence that the patio was left clean at the *end* of the tenancy.

In relation to the Landlord's claim for the cleaning costs of the carpet, I also award the amount claimed by the Landlord in the amount of **\$57.75**. I make this determination based on the balance of probabilities that the Tenant did not reasonably clean the carpets at the end of tenancy and was responsible for steam cleaning or shampooing the carpets after a tenancy of one year, which was the case in this tenancy. I find that the Tenant failed to meet his obligations as required by the Act in relation to the carpet cleaning which was further reinforced by the terms of the tenancy agreement. I also find that there is not sufficient evidence that the Landlord informed the Tenant either in writing or verbally that the Tenant did not have to clean the carpets.

In relation to the carpet stain, while the Landlord showed that this damage was in existence and stemmed directly from the Tenant, I accept the submission of the Tenant and find that the Landlord failed to provide sufficient evidence to show why the coffee stain could not be removed by the carpet cleaning. As a result, I dismiss this portion of the Landlord's Application.

As the Landlord has been successful in the majority of the claim, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$242.75**.

Conclusion

As the Landlord already holds a total amount of \$467.50 in the form of the Tenant's security deposit, I order the Landlord to retain \$242.75 from this amount in full satisfaction of the Landlord's Application, pursuant to Section 38(4) (b) of the Act.

As a result, the Landlord will return the balance of the Tenant's security deposit after making the above deduction, in the amount of **\$224.75**.

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: April 28, 2014

Residential Tenancy Branch

