



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, OLC, AS

For the landlord – MNSD, FF, SS

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; A Monetary Order to recover the security deposit; an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and an Order to allow the tenant to assign or sublet the rental unit. The landlord applied for an Order to be permitted to keep all or part of the security deposit, an Order for substitute service; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord's agent testified that the tenant was subsequently served the hearing documents to an address provided by the tenant and the landlord withdraws their request for an Order for substitute service and to recover the filing fee.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. Consequently the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on January 09, 2015.

Canada Post tracking numbers were provided by the landlord in verbal testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The agent for the landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord permitted to keep part of the security deposit?

Background and Evidence

The landlord's agent testified that this month to month tenancy started on May 01, 2013. Rent was \$700.00 per month due on the 1st of each month. The tenant paid a security deposit of \$350.00 on April 23, 2013. Both parties attended the move in and move out condition inspection of the unit and the report for this inspection has been provided in documentary evidence. The tenancy ended on August 22, 2014. The tenant provided a forwarding address in writing on September 02, 2014.

The landlord's agent testified that the tenant agreed in writing for the landlord to make deductions from the security deposit for carpet cleaning in the unit and generally cleaning. The areas of cleaning were identified on the move out condition inspection report. As the landlord's agent was not able to specify at that time how much the deductions would be the tenant simply signed to agree to deductions being made to cover the cost of the required cleaning.

The landlord's agent testified that the carpet cleaning came to \$94.50 and the cleaning came to \$200.00. The cleaning work took eight hours at \$25.00 per hour. A copy of both invoices has been provided in documentary evidence. The landlord does not seek to

recover the full \$200.00 for cleaning and have limited their claim to \$125.00. The total amount the landlords deducted from the tenant's security deposit was \$219.50. The balance of the security deposit was returned to the tenant by cheque of \$130.50.

The landlord seeks an Order to keep \$219.50 from the security deposit.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing and in spite of filing their own application. Therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

I refer the parties to s. 38 (4) of the *Act* which states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,

As the tenant did agree in writing that the landlord could keep an amount from the security deposit to pay for carpet cleaning and generally cleaning; I find the landlord does not necessarily have to file an application to keep a portion of the security deposit; however, as an amount was not specified at the time I will make an Order in this matter.

I am satisfied from the evidence presented in the form of the move in and move out condition inspection reports and the photographic evidence showing areas of the unit which were left in a dirty condition, that the landlord is entitled to retain the amount of \$219.50 from the security deposit pursuant to s. 38(4)(b) and s. 38(4)(a) of the *Act*. The landlord has already returned the balance of the security deposit to the tenant.

Conclusion

I uphold the landlords claim to keep **\$219.50** from the security deposit.

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 02, 2015

Residential Tenancy Branch

