



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this tenancy started on October 31, 2011 for an initial term of one year, later reverting to a month to month tenancy. Rent for this unit was \$1,379.00 per month due on the 1st of each month. The tenant paid a security deposit of \$675.00 on October 01, 2011.

The landlord testified that the parties conducted a move out condition inspection report at the end of the tenancy. Many areas of the unit were found to be dirty. The floors required cleaning, the cupboards and drawers were left dirty, the appliances were left dirty both inside and out, the bathrooms needed to be cleaned, the walls required cleaning, the blinds were left with dust, dirt

and food stains, there was mould and dirt left in the window and door tracks and on the window sills. The landlord testified that she spent 23 hours cleaning the unit and also employed the services of a cleaner to help clean the unit. The cleaner spent a total of 15 hours over three days and charged the landlord \$450.00 for this work. The landlord has provided photographic evidence of the areas that required cleaning along with the condition inspection report which detailed the areas to be cleaned and the invoice from the cleaner. The landlord has not claimed for her hours of cleaning.

The landlord seeks to recover the cost of cleaning supplies of \$60.42 and has provided receipts in documentary evidence. The landlord later adjusted this charge to \$58.53 as on one receipt the landlord had purchased a can of coke for \$1.89.

The grout and tile needed to be steam cleaned and the landlord employed a company to do this work. The company cleaned the tiles in the kitchen and two bathrooms and the dirt was so in-ground that the tiles had to be cleaned three times. The landlord has provided photographic evidence and the invoice from the company who did the work for \$157.50.

The landlord testified that the tenant left a hole in the screen door. The landlord was able to purchase some screen door repair tape and repaired the door without having to replace it. The landlord has provided photographic evidence and the invoice for the repair kit of \$39.20.

The landlord testified that the hardwood flooring in the unit was left badly scratched and dented. The landlord approached a flooring company for advice on how to deal with the scratches as the landlord did not want to have to replace the floor. This company suggested that the landlord try to cover the scratches with a hardwood refinisher, however this did not work. The landlord has not made a claim for the damage to the floor but seeks to recover the cost for the hardwood refinisher of \$28.00.

The landlord testified that the amount spent on the repairs and cleaning came to \$735.12 with the adjustment of \$1.89 for the can of coke (\$733.23); however, the landlord seeks only an order to keep the tenant's security deposit of \$675.00 and the \$50.00 filing fee.

The tenant testified that he spent eight hours cleaning the unit but agreed that he did forget to clean some areas. The tenant testified that on the inspection report he agreed that the report fairly represented the condition of the unit at the end of the tenancy; however, he agreed that the cleaning costs should be limited to \$250.00. If the landlord had someone look at the work and the cost was higher than the landlord must consult with the tenant. The tenant testified that the landlord did not consult the tenant about any additional costs.

The tenant testified that although he had felt pads on his furniture and a rug under the table there were scratches on the floor but these were all under the furniture and were no more than normal wear and tear during the course of his tenancy.

The tenant testified that he did not receive a copy of the inspection report until September 15, 2014. The tenant seeks to recover \$425.00 of his security deposit and the landlord may keep \$250.00 for cleaning.

The landlord testified that she did not inform the tenant that the cleaning costs would be more but did inform the tenant that the landlord would be using all the security deposit for cleaning and repairs.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied from the evidence before me that the tenant did not leave the rental unit in a reasonably clean condition. Consequently, I am satisfied that the landlord incurred a cost of **\$450.00** for the services of a cleaner. The tenant argued that they had only agreed on \$250.00 being applied from the security deposit for cleaning; however, if the costs are higher once the cleaning has been completed then the landlord is entitled to recover that cost. The landlord has not charged the tenant for her own hours in cleaning the unit and I am satisfied that the landlord has mitigated the loss to the tenant.

Furthermore, I am satisfied that the landlord had to purchase cleaning supplies to clean the unit and that the total amount of these supplies, as adjusted by the landlord, was **\$58.53**. I therefore uphold the landlord's claim for cleaning supplies.

I am satisfied that the landlord incurred a loss of **\$157.50** to have the tiles and grout professionally cleaned. The landlord's evidence supports her claim that these were left in a dirty condition.

I am satisfied that the tenant caused some minor damage to a screen and this repair was completed in a manner that did not require the screen being replaced. I therefore uphold the landlord's claim for **\$39.20**.

I am satisfied that the hardwood flooring was left scratched and dented. The tenant argued that these scratches and dents were all under the furniture and were no more than normal wear and tear. The landlord is not making a claim to replace the flooring. I find from the evidence presented that these scratches could be considered more than normal wear and tear and the landlord has not charged the tenant an amount to replace or refinish the floor other than the cost

of the hardwood refinishing product. I therefore uphold the landlord's claim to recover the cost of the hardwood refinisher of **\$28.00**.

As the landlord has limited her claim to **\$675.00** I Order the landlord to keep the security deposit of **\$675.00** pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 72(1) of the *Act* in the amount of **\$50.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 21, 2015

Residential Tenancy Branch

