



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit in satisfaction of the monetary amount requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, DT ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the resident manager for the landlord company named in this application and that he had authority to represent the landlord company as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain a portion of the tenant's security deposit in satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A previous hearing was held between these parties regarding this tenancy at the Residential Tenancy Branch ("RTB") on December 11, 2014, after which a decision of the same date was issued by a different Arbitrator. The file number for this previous hearing appears on the front page of this decision. At the previous hearing, the landlord applied for the same relief as in this hearing and named the tenant's father as a respondent; the tenant's father was deceased in 2012. In that decision, the Arbitrator dismissed the landlord's application with leave to reapply in order to identify the correct tenant as a respondent on the application, who is now named correctly in this application and is the tenant who appeared at this hearing.

Both parties confirmed that this tenancy began on September 1, 1988 and ended on October 31, 2014. The tenant is listed as an occupant on the tenancy agreement. Both parties agreed that the tenant is a true tenant under this tenancy agreement, as he has been residing in the rental unit and paying rent to the landlord even after his father passed away in 2012. Monthly rent in the amount of \$1,213.00 was payable on the first day of each month. A security deposit of \$385.00 was paid by the tenant on August 18, 1988, as per the landlord's rent ledger and security deposit calculation, included with the landlord's Application. The landlord indicated that he returned \$606.92, including the security deposit plus interest, to the tenant within two weeks of the end of this tenancy. The landlord provided a copy of the written tenancy agreement with its Application. The landlord confirmed that a move-in condition inspection and report were completed on September 1, 1988 and a move-out condition inspection and report were completed on October 31, 2014. Both reports were provided by the landlord. The landlord stated that he received a written forwarding address from the tenant on October 31, 2014, by way of the move-out condition inspection report.

The landlord seeks \$110.00 for carpet cleaning and \$30.00 for drapes dry-cleaning at the rental unit at the end of this tenancy. This cleaning is noted on the move-out condition inspection report. The tenant disputes these charges but noted that there was no space on the move-out condition inspection report to indicate his disagreement. The tenant indicated his disagreement with these charges on a separate move-out agreement signed with the landlord. The landlord provided a copy of this agreement. The landlord stated that clause 8 of the tenancy agreement indicates that the drapes must be dry-cleaned in the last month of tenancy and the carpets must be shampooed immediately prior to vacating the suite. The tenant stated that he dry-cleaned the

drapes in August 2014. The landlord stated that the drapes did not look clean when the tenant vacated and that it was supposed to be done in October 2014. The landlord explained that the landlord did not dry-clean the drapes but steam-cleaned them instead. The landlord agreed that the tenant vacuumed but did not shampoo the carpets when he vacated. The tenant stated that he did not shampoo the carpets because he was told by the landlord that the carpets would be replaced, as they been there since he moved in 1988.

The landlord also seeks to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show the efforts to minimize the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused loss and damage to the rental unit, which entitles the landlord to compensation.

In summary, the landlord must prove the following elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$30.00 for dry-cleaning the drapes in the rental unit. The landlord did not provide a receipt for this amount to demonstrate the cost of steam-cleaning. The landlord simply provided an accounting document indicating that the tenant would be charged \$30.00 for these services. The landlord stated that this was the usual cost for this service performed by the landlord. Regardless of the provision of the tenancy agreement, which says that the tenant must dry-clean the drapes in the last month of tenancy, the landlord must still prove the damage for which it is claiming. Therefore, the landlord's claim fails part three of the test above, as the landlord did not provide receipt proof of the actual amount required to compensate for the claimed loss.

I find that the landlord is entitled to \$99.75 for carpet cleaning. The landlord only provided a receipt for the above amount, not the \$110.00 that it is seeking in this Application. Clause 8 of the tenancy agreement requires the tenant to shampoo the carpet at his own expense at the end of this tenancy. The tenant confirmed that he did not shampoo the carpets before vacating. The tenant did not provide documentary proof that the landlord advised him that the carpets would be removed after the end of the tenancy. The landlord denied this fact. Residential Tenancy Policy Guideline 1 indicates that the tenant will be held responsible for shampooing carpets after at least one year of tenancy. This tenancy began in 1988 and the carpets have remained the same since that time, according to both parties. Therefore, I find that shampooing of the carpets was necessary and the tenant was responsible to complete this cleaning. I find that the landlord has met the test above and it is entitled to compensation for this loss.

The landlord continues to hold \$40.00 from the tenant's security deposit. The landlord returned \$606.92 to the tenant. However, the interest on the \$385.00 deposit paid on August 18, 1988 until the date of this decision on August 12, 2015, equals \$261.92. Therefore, the security deposit including interest equals \$646.92. In accordance with the offsetting provisions of section 72 of the Act, I find that the landlord is entitled to retain the \$40.00 remaining from the security deposit, in partial satisfaction of the monetary award.

The tenant is not entitled to the return of double the amount of his security deposit plus interest, under section 38 of the *Act*. The tenant is only entitled to double the amount if the landlord fails to return the deposit in full or does not file an application within 15 days of the end of the tenancy and the provision of the tenant's written forwarding address. Although the landlord did not return the deposit in full, the landlord filed its initial application to retain the security deposit on November 10, 2014. This is within 15 days of the end of this tenancy and the written forwarding address provision on October 31, 2014. The Arbitrator at the previous hearing on December 11, 2014, extended the time

for the landlord to file a new application to keep the security deposit and therefore, the landlord is within the time limits of section 38.

As the landlord was partially successful in its Application, it is entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

I order the landlord to retain \$40.00 from the tenant's security deposit in partial satisfaction of this claim.

I issue a monetary order in the landlord's favour in the amount of \$109.75 against the tenant as follows:

Item	Amount
Carpet Cleaning	\$99.75
Less Security Deposit Portion still held by the Landlord	-40.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$109.75

The landlord is provided with a monetary order in the amount of \$109.75 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 12, 2015

Residential Tenancy Branch

