



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 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 and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 the tenant moved into this rental unit in June, 2007 when the property was owned by the former landlord. This landlord purchased the property and entered into a new tenancy agreement with the tenant in March 2010. Rent for this unit was \$1,077.00 per month due on the 1st of each month. The tenancy ended on September 02, 2014. The tenant paid a security deposit of \$500.00 on June 01, 2017 and of this \$200.00 was returned to the tenant on September 04, 2014.

A previous hearing took place in May, 2015 when the tenant filed an application to recover the balance of her security deposit. It was determined at that hearing that the tenant's application was premature as the tenant had not provided a forwarding address in writing to the landlord. It was also determined at that hearing that the tenant's address provided on her application was her forwarding address and the landlord was deemed to have received the tenant's forwarding address in writing on May 06, 2015.

The landlord testified that during the walk through of the unit at the end of the tenancy he found that the carpets were dirty and had not been cleaned. There was no evidence of carpet cleaning, no evident track marks on the carpet and when asked, the tenant did not provide a carpet cleaning receipt or receipt for the hire of a carpet cleaner machine and chemicals. The day after the tenant moved out the landlord went to the unit and the carpets were not wet. The landlord testified that his incoming tenants saw the carpets were dirty and so the landlord had the carpets cleaned professionally before the new tenants moved in on September 05, 2014. The landlord seeks to recover the cost for cleaning the carpets of \$157.50 and has provided a carpet cleaning receipt in documentary evidence.

The landlord testified that the tenant has not paid the last two gas bills and copies have been provided to the tenant. The tenancy agreement states that the tenant must pay 40 percent of the gas bills. The bills from the period between July 08, 2014 and August 07, 2014 and from August 07, 2014 to September 08, 2014 (the landlord testified that he has prorated the last gas bill by five days as the tenant vacated on September 02, 2014). The tenant's share of the first gas bill is \$18.38 and the tenant's prorated share of the second gas bill is \$15.60.

The landlord testified that the hydro bill is for the period between June 26 to September 02, 2014 and the tenant's share of this is 50 percent. The tenant's share of this bill is \$124.62. The landlord seeks an Order permitting the landlord to keep these amounts for utilities from the security deposit.

The landlord also seeks to recover his filing fee of \$50.00.

The tenant testified that when she moved out she asked the landlord for the security deposit the landlord said he would meet the tenant the next day but was delayed so arranged to meet the

day after but was delayed again. The landlord said he was keeping the rest of the security deposit to cover any outstanding utilities because the final bills had not come in yet. The tenant testified that she paid \$120.00 towards gas and hydro on August 02, 2014. The tenant referred to her rent receipt showing this amount was paid along with her rent. The tenant testified that this amount should cover some of the hydro and gas bills claimed by the landlord.

The tenant disputed the landlord's claim for carpet cleaning. The tenant testified that her daughter cleaned the carpets in the unit on September 02, 2014 using their own carpet cleaning machine. The tenant testified that the landlord did not ask the tenant for a carpet cleaning receipt and as they cleaned the carpets using their own machine there would not be a receipt.

The tenant calls her witness. The witness is the tenant's daughter. The witness testified that she cleaned the carpets after all the tenant's belongings were removed on September 02, 2014. The witness testified that she spoke to the landlord informing him that the tenant's new place has delayed and that the carpets and unit would be cleaned prior to the tenant moving out later that day. The landlord said it was fine. The landlord also said he would return \$200.00 to the tenant for her security deposit and the balance would be paid after the utility bills had come in. The witness testified that she took photographs of the unit to show how clean it was and these photographs show tracking marks on the carpets from the cleaner they used. The witness testified that the carpets in one bedroom were cleaned twice as there had been a flood and the landlord had not replaced those carpets.

The landlord testified that when he was talking to the tenant's daughter she had said the carpets should be replaced and so they would not clean them.

The tenant asked the landlord if the landlord agreed that the tenant always cleaned everything up in her unit. The landlord responded that the unit was left nice and clean but the carpets were not left clean. The tenant asked the landlord about the \$120.00 she paid for utilities in August. The landlord responded that that payment was for the previous bills as these bills had not been received by August 02, 2014.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the landlord's claim to keep \$157.50 from the security deposit for carpet cleaning; In this matter the landlord has the burden of proof to show that the tenant did not leave the carpets reasonably clean pursuant to s. 32 of the *Act*. The *Act* states that the rental unit must be reasonable clean; the Residential Tenancy Policy Guidelines #1 states that carpets must be shampooed or steam cleaned if the tenancy is longer than a year. Nowhere in the *Act* or Policy Guidelines does it state that a tenant must have carpets professionally cleaned. The tenant's photographic evidence shows carpet tracks consistent with a carpet cleaner and the tenant's witness gave sworn testimony that she had cleaned the carpets on September 02, 2014. If the landlord wanted the carpets cleaner for his new tenants then the landlord is not entitled to pass this cost onto this tenant. Consequently, I am satisfied from the evidence presented that the tenant's daughter did shampoo the carpets at the end of the tenancy using a household carpet cleaner and therefore the landlord has not met the burden of proof that the carpets were not cleaned by the tenant. The landlord's claim to recover carpet cleaning costs is dismissed without leave to reapply.

With regard to the landlord's claim to keep \$158.60 from the security deposit for unpaid utilities; the landlord has presented utility bills for the period in question and has calculated the tenant's share as 40 percent for the gas bills and 50 percent for the hydro bill. The tenant argued that she had paid an amount on August 02, of \$120.00 which should be deducted from these utility bills. I have considered the tenant's arguments and find that the amount paid by the tenant of \$120.00 for utilities on August 02, 2014 is likely to be an amount paid for previous utilities as these bills would not have been received by the landlord prior to August 02, 2014. Consequently, I uphold the landlord's claim to keep **\$158.60** from the tenant's security deposit held in trust by the landlord.

As the landlords' claim has some 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*.

Security deposit	\$500.00
Accrued interest	\$11.96
Less amount returned to the tenant	(-\$200.00)
Amount held in trust by the landlord	\$311.96
Utilities to be deducted	(-\$158.60)

Filing fee to be deducted	(-\$50.00)
Amount due to the tenant	\$103.36

Conclusion

For the reasons set out above, I grant the landlord the amount of \$158.60 for utilities and \$50.00 for the filing fee. The amount of **\$208.60** may be retained from the security deposit pursuant to s. 38(4)(b) of the *Act*.

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$103.36**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord 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: October 14, 2015

Residential Tenancy Branch

