



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H&K Wong Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting them to retain part of the security deposit. Both parties participated in the conference call hearing.

The landlord submitted documentary evidence and photographs to the Residential Tenancy Branch but did not provide that evidence to the tenants as is required by the Rules of Procedure. As the tenants were not given opportunity to view the landlord's evidence, I have not considered that evidence.

Issue to be Decided

Should the landlord be permitted to retain part of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2014 at which time the tenants paid a \$900.00 security deposit and that it ended on May 1, 2015.

The landlord claimed that the rental unit was not left clean at the end of the tenancy and that the tenants left behind garbage and a mattress which had to be discarded. The landlord further claimed that the tenants did not clean the carpet at the end of the tenancy and left it stained to the extent that it had to be repaired. The landlord claimed that they paid \$462.00 to have the carpet cleaned and for the cleaning of the unit and garbage removal. They further claimed that they paid \$241.50 to have the stained areas of the carpet repaired.

The tenants claimed that they cleaned the unit prior to vacating and that the only items left behind were items which were in place at the beginning of their tenancy. They acknowledged that the carpet had some stains at the end of the tenancy which occurred

during their occupancy and stated that they did not believe it would cost more than \$200.00 to repair those areas.

The landlord also seeks to recover the \$50.00 filing fee paid to bring this application.

Analysis

The landlord bears the burden of proving their claim on the balance of probabilities. As I could not consider the landlord's written evidence or photographs, I relied solely on the verbal testimony from the parties in arriving at this determination.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear. Although the landlord claimed that the tenants did not leave the unit reasonably clean, the tenants claimed that they cleaned the unit and removed all of the items they had brought into the unit. As the landlord provided no evidence to show that the unit was not left reasonably clean or that there were items left behind which were not in place at the beginning of the tenancy, I am unable to find that the tenants failed to meet their obligation to clean under the Act and I dismiss the claim for cleaning the unit and removing garbage and a mattress.

The tenants acknowledged that they caused some staining to the carpet. The landlord provided no evidence to corroborate their claim that they paid to have the carpet cleaned and that the cleaning could not remove the stains, nor did they provide evidence to corroborate their claim that they paid \$241.50 to have the carpet repaired. Had the tenants not acknowledged that the carpet was stained, I would not have awarded the landlord anything. However, as the tenants acknowledged that they stained the carpet, I find that they caused damage to the rental unit and that it goes beyond what may be characterized as reasonable wear and tear. Because the tenants offered to pay \$200.00 and in the absence of corroborating evidence from the landlord showing what they paid to have cleaning and repairs completed, I find it appropriate to award the landlord \$200.00.

As the landlord has been largely unsuccessful in their claim and as the limited success they enjoyed was due entirely to the tenants' admission and offer of payment, I find that the landlord should bear the cost of their filing fee.

I order the landlord to retain \$200.00 from the security deposit and I order them to return the \$700.00 balance to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain \$200.00 from the security deposit and is ordered to return the \$700.00 balance to the tenants.

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: November 09, 2015

Residential Tenancy Branch

