



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*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* (the "*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's two agents (collectively the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Each agent confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

Issue(s) to be Decided

Is the landlord entitled to a monetary order 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 authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

The landlord testified that this tenancy began on August 1, 2014 on a fixed term basis. Rent in the amount of \$915.00 was payable on the first of each month. The tenant

remitted \$455.00 for the security deposit at the start of the tenancy. The tenant vacated the rental unit on November 30, 2015.

The landlord is seeking to retain the security deposit in the amount of \$455.00 to offset damages to the carpet. The landlord testified that the carpets were stained and subsequently shampooed at the cost of \$78.75. The landlord submitted a receipt in this amount from a carpet cleaning company. The landlord plans to replace the stained carpets and seeks \$900.00 in replacement costs from the tenant.

The landlord testified that a move-in and a move-out condition report were completed and the forwarding address was received in writing from the tenant on April 15, 2016.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

The landlord received the forwarding address on April 15, 2016. The landlord did not file an arbitration application to retain the deposit until May 9, 2016, which is past the fifteen days allowable under the *Act*. The landlord did not return the full deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of his security deposit in the amount of \$910.00.

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Although the landlord provided an estimate to replace the carpet, I find this portion of the landlord's claim premature as the carpet has not been replaced to date. Therefore, I dismiss this portion of the landlord's claim.

The Residential Tenancy Policy Guideline # 1 “Landlord & Tenant – Responsibility for Residential Premises,” establishes that tenants are responsible for steam cleaning or shampooing carpets after a one year tenancy. Based on this, I find the landlord is entitled to \$78.75 for carpet cleaning.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application.

The landlord has established a damage claim therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$128.75 of the \$910.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$781.25 security deposit balance.

Conclusion

The landlord is entitled to \$78.75 in damages and \$50.00 for the filing fee for a total of \$128.75. I order the landlord to retain \$128.75 from the security deposit in full compensation of this amount.

The tenant is entitled to the return of the balance of the security deposit. I therefore grant the tenant a monetary order for the balance of the deposit, in the amount of \$781.25.

I dismiss the landlord’s application for damages in relation to carpet replacement with leave to reapply.

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: September 22, 2016

Residential Tenancy Branch