



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MNDC, MNSD, FF

Landlord's application: MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The parties exchanged documentary evidence prior to the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit including double the amount?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the tenant's security deposit?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Sidney. The tenancy began on December 1, 2014 for a one year term and thereafter on a month to month basis. The monthly rent was \$1,150.00, payable on the first of each month. The tenant paid a security deposit of \$575.00 before the tenancy began. The tenancy agreement provided that: "HYDRO SPLIT 50/50 – EQUAL PAYMENTS @ \$100 PER MONTH":

The tenant gave notice and moved out of the rental unit at the end of December, 2015. She gave the landlord her forwarding address in writing when she moved out. The tenant moved out of the rental unit on December 15, 2015.

The landlord and the tenant participated in a move out inspection. The landlord said that the tenant damaged the two year old carpet in the master bedroom. She testified that there was a four foot snag in the carpet in a conspicuous area and the carpet had to be replaced at a cost of \$513.45. The landlord claimed \$25.00 for the cost of oven cleaning and claimed that the tenant owed the sum of \$87.00 as an adjustment to the hydro account. The tenant paid \$50.00 for the hydro bill for the period from December 1, to December 15th. The landlord said there was an additional amount owed for the Hydro account at the end of the tenancy and the tenant's portion was \$87.58. The tenant referred to a photograph of the electrical utility meter reading in support of her claim.

The landlord testified that the tenant failed to properly clean the rental unit; the oven was not cleaned. The landlord testified that she damaged the carpet in the master bedroom to the extent that it had to be replaced at a cost of \$513.45. The landlord testified that she specifically warned the tenant about the possibility of a carpet snag and if one occurred, to never cut it; instead to use clear caulking to tuck it back in place or to call the landlord. The landlord claimed that she told her that she had cut a carpet snag and it later became caught in the roller of the tenant's vacuum cleaner, causing a tear in the carpet more than four feet long. According to a statement from a carpet company, patching the tear was not a practicable solution and the carpet had to be replaced.

The tenant testified that after she moved into the rental unit on the first occasion when she vacuumed she went over what appeared to her to be a piece of fluff; it turned out to be a loose carpet thread which caught on the roller, pulling the thread out of the carpet. The tenant testified that the landlord did not tell her how to repair a loose carpet thread at any time during the tenancy. She said that if the problem was brought to her attention at the start of the tenancy, she would have asked to have it repaired. The tenant said that the landlord had extra pieces of the same carpet in the storage area and there was more than enough to repair the carpet.

The landlord's response from her carpet installer is that patching the carpet in the middle of a room is not a viable solution, either aesthetically, or for the durability of the carpet.

Analysis

The tenant's testimony is that the landlord did not advise her about the method to repair a carpet run or loop when she moved in. The tenant testified that at no time did she cut

a carpet loop before the incident that took place when her vacuum cleaner became entangled on a loop of the carpet. I accept the tenant's testimony in preference to that of the landlord. There were no written instructions given to the tenant and I find it unlikely that the landlord gave such specific verbal instructions when the tenant moved in. Even if such instructions were given, according to the tenant's evidence she was not aware of a loop, loose thread and simply ran the vacuum over what appeared to be a piece of fluff. I find that the landlord has failed to prove on a balance of probabilities that the carpet damage was caused by any negligence or want of care on the part of the tenant and I deny the landlord's claim for the cost to replace the carpet.

With respect to the landlord's claim for reimbursement of an amount for utilities, the tenancy agreement only makes reference to splitting an equal payment amount and does not mention any other adjustments. The landlord submitted a photograph of the electricity meter, but she did not submit any calculation to show how she arrived at the amount claimed. I find that the landlord has not established that the tenant is liable to reimburse the landlord for utilities in any amount and the claim for payment of utilities is dismissed.

I do find that the evidence does establish that the tenant failed to properly clean the oven on move-out and I allow the landlord's claim for oven cleaning in the amount of \$25.00.

The tenant filed her application to claim double the security deposit on December 31, 2015. The landlord applied to retain the deposit on December 30, 2015, which was within 15 days of the end of the tenancy.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The landlord brought her application within the time provided by the *Residential Tenancy Act*, therefore there is no basis for the tenant's claim for payment of double the amount of her deposit. The landlord has been largely unsuccessful in her application and I therefore decline to award a filing fee for her application. I order that the landlord

retain the sum of \$25.00 from the security deposit that she holds, leaving a balance of \$550.00 to be returned to the tenant. The tenant's application for double the amount of her deposit was unsuccessful and since her claim for the return of her deposit could have been dealt with on the landlord's application, I decline to award the recovery of the filing fee for the tenant's application. I grant the tenant a monetary order in the amount of \$550.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord has been awarded the sum of \$25.00. The remainder of her claims have been dismissed without leave to reapply. The tenant has been awarded the balance of the security deposit; her claim for payment of double the amount of the deposit has been dismissed without 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 06, 2016

Residential Tenancy Branch

