



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD

Introduction

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

- a monetary order for unpaid rent, 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; and
- 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.

The tenant and landlord's agent (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. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord did not provide any documentary evidence or testimony in relation to unpaid rent, therefore I dismiss this portion of the landlord's application.

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?

Background and Evidence

As per the testimony of the parties, the tenancy began on October 1, 2009 on a fixed term for six months after which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$700.00. The tenant vacated the rental unit on May 18, 2016.

The parties agreed a written condition inspection report was conducted on September 25, 2009 just prior to the start of tenancy. In relation to the condition inspection report at the end of tenancy, the parties agreed the landlord completed the inspection on May 31, 2016 in the absence of the tenant. The tenant provided her forwarding address in writing on April 28, 2016.

Landlord Claim and Tenant's Reply

The landlord testified that she is seeking \$709.99 in damages.

Carpet

The landlord seeks to recover the cost of shampooing the carpet in the amount of \$140.00. The landlord has submitted a copy of the receipt.

The tenant testified that she shampooed the carpet prior to vacating and she understands that the landlord removed the carpets after the tenancy ended.

Cleaning

The landlord seeks to recover the cost of cleaning the rental unit in the amount of \$192.00. The landlord has submitted a copy of the receipt.

The tenant did to dispute that the rental unit required cleaning.

Furniture Removal

The landlord seeks to recover the cost of furniture removal. The landlord testified it took a company two trips to remove all the items left behind. The landlord testified that the tenant left a couch, table, television stand, two televisions, kitchen furniture and three to four mattresses. The landlord submitted two receipts, each in the amount of \$157.50 for a total of \$315.00.

The tenant agreed that she left a couch, television stand and desk in the rental unit. She disputes leaving any other items. It is the tenant's position that one trip from the junk removal company should have completed the job. The tenant pointed out that another reason she should not be held liable for the second receipt amount is that it

includes carpet removal. The tenant testified that she did not remove carpet and if the landlord removed carpet as she suspected she did, she should not be held liable for its disposal costs.

Light Fixture

The landlord testified that the light fixture in the bedroom was broken and required replacement. The landlord seeks to recover \$62.99 and has submitted a receipt in the amount of \$70.01.

The tenant testified that the bedrooms did not contain light fixtures, only electrical outlets in which to plug lamps into. The tenant testified that she did not leave any broken light fixtures.

Analysis

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.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Carpet

Residential Tenancy Policy Guideline #1, establishes that after a year of tenancy, a tenant is responsible for shampooing the carpets. In the absence of a receipt from the tenant indicating this was done, I find the landlord is entitled to \$140.00 for carpet shampooing.

Cleaning

Based on the tenant's admission that cleaning was required, I find the landlord is entitled to \$192.00 for cleaning.

Furniture Removal

As per the tenant's admission that some items were left behind, I find the landlord is entitled to recover the cost of one trip of junk removal in the amount of \$157.50. I find

the inclusion of carpet and the absence of an itemized list on the second receipt is insufficient to establish all items removed during the second trip were solely those items left behind by the tenant. For this reason I dismiss the landlord's claim for the second receipt in the amount of \$157.50.

Light Fixture

The light fixture receipt submitted by the landlord is inconsistent with the amount she is seeking and does not indicate a unit number. Further the tenant disputes the bedrooms even contain light fixtures. I find the landlord has provided insufficient evidence to establish the submitted receipt is for a light fixture for the rental unit and therefore dismiss this portion of the landlord's claim.

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 28, 2016. The landlord did not file an arbitration application to retain the deposit until June 13, 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 her security deposit in the amount of \$1,400.00.

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 \$489.50 of the \$1,400.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$910.50 security deposit balance.

Conclusion

The landlord is entitled to \$489.50 in damages. I order the landlord to retain \$489.50 from the \$1,400.00 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 \$910.50

I dismiss the landlord's application for damages in relation to the second junk removal receipt and light fixture 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: December 12, 2016

Residential Tenancy Branch