



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from the landlord under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- 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
- 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*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received the landlord's documentary evidence. The tenant did not submit any documentation for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

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

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

Preliminary Issue

At the outset of the hearing the tenant advised that her full and legal name is “Christy Lamarsh” not “Christie Isbell” as noted by the landlord. Both parties agreed to the amendment. Pursuant to section 64(3)(C) of the Act, that amendment is made and reflected in this decision.

Background and Evidence

The landlord’s testimony is as follows. The tenancy began on July 1, 2013 and ended on August 31, 2014. The tenants were obligated to pay \$750.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$350.00 security deposit. The landlord testified that the tenant did not pay the rent for the month of July 2014. The landlord testified that the tenant left the unit dirty at move out and required her to have professional cleaners clean the suite and the carpets. The landlord testified that written move in and move out condition inspections were not conducted. The landlord testified that all matters related to this tenancy were verbal.

The landlord is applying for the following:

1.	Rent for July 2014	\$750.00
2.	Suite Cleaning	\$350.00
3.	Carpet Cleaning	\$525.00
4.	Filing Fee	\$100.00
5.	Minus security deposit	-\$350.00
	Total	\$1275.00

The tenant gave the following testimony. The tenant testified that the suite was so dirty upon viewing that the parties came to an arrangement that the tenant was entitled to the first month free rent if she cleaned it. The tenant testified that when it came to move into the unit the landlord went back on her word and wanted her to pay the rent. The tenant testified that she agreed to pay as she and her son had nowhere to go at that point.

The tenant testified that she didn’t pay the rent as claimed because she felt she had more than covered that with the work she had done in getting the unit in a reasonable state and that it was money that was owed to her. The tenant testified that she cleaned the unit at the end of the tenancy by hiring her boyfriend’s brother as well as the current tenants. The tenant testified that she paid the current tenants over \$500.00 to clean the unit and remains friends with those tenants to this day.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

1. July 2014 Rent - \$750.00.

The tenant acknowledges the non-payment but advised that she was promised one month's free rent as payment for cleaning the unit prior to moving in. The landlord testified that she couldn't remember as to whether an arrangement had been made. The landlord did not provide any rent ledgers, rent roll, or other documentation to reflect the shortfall. In the landlords own testimony she stated she wasn't sure when the rent was unpaid as her previous bookkeeper handled these issues. In addition, the landlord did not dispute as to whether some arrangement had been made, but stated she didn't recall if one had been made.

In addition, the landlords' record keeping was less than ideal; the name of the tenant listed on this application, the incorrect amount the security deposit the landlord testified that she had, the incorrect mathematical calculations on the monetary worksheet for this application and the lack of knowing when she became aware that rent was short all raises as to the accuracy of the events as submitted by the landlord. I did not find the landlords testimony compelling. Based on the above I find I prefer the tenant's version of events I find that the tenant was entitled to the one month's compensation and that no rent is outstanding.

2. Suite and Carpet Cleaning - \$875.00

The parties both confirmed that neither a written move in nor a move out condition inspection report was conducted. The landlord provided receipts that the unit was cleaned but did not provide a statement as to the condition of the unit from the cleaners or photos to help support her claim. The tenant testified that she was "appalled" when the landlord sought the cost of cleaning after the large amount of money she spent paying several individuals to clean the suite. The tenant testified that issue of cleaning only came up months after she had already moved out.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting

documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any, or the cleanliness of the unit at move out. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Section 39 of the Act addresses the issue of the security deposit as follows:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,**

(a) **the landlord may keep the security deposit or the pet damage deposit,** or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The tenant did not provide her forwarding address to the landlord within one year of the tenancy ending and therefore has extinguished her right to the deposit. The landlord is entitled to retain the \$350.00 security deposit. As the landlord was only partially successful in their application they must bear the cost of the filing fee.

Conclusion

The landlord is entitled to retain the \$350.00 security deposit.

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: January 04, 2017

Residential Tenancy Branch