



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to retain the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant states that the Landlord’s evidence package was just received by the Tenant on Friday February 10, 2017. It is noted that this package was provided to the Residential Tenancy Branch (the “RTB”) on the same day. The Landlord states that while they had the invoices for work done in September 2016 they were waiting for a letter from their contractor to detail the work and because the Landlord did not wish to share the information on the invoice that was not related to the claim. The Tenant, a student, states that she does not wish to delay the hearing to review the materials as to do so would result in continued missed classes.

Rule 2.5 of the RTB Rules of Procedure provides that to the extent possible, a party must submit copies of all documentary evidence to be relied on at the hearing, with its application. Rule 3.1 and 3.14 provides that evidence provided to the RTB must be provided to the other party within 3 days of making the application and no less than 14 days before the hearing. Rule 3.11 provides that if a party unreasonably delays the

service of evidence it may be refused for consideration. As the evidence to support the claim was available to the Landlord back in September 2016 and considering that the evidence was submitted at the last minute, I find that the Landlord unreasonably delayed the service of the evidence and given the prejudice to the Tenant I decline to either adjourn the hearing or to consider the evidence package.

It was noted that the Landlord did not provide any detail in the application in relation to how the amount being claimed was calculated or what damages the amount was being based on. The Landlord states that the total costs for all the items being claimed as damaged far exceed the amount being claimed which is only the security deposit. The Landlord states that other costs are \$400.00 for damage to the walls and \$100.00 for a broken sconce. The Landlord states that the largest cost was in relation to the carpet. Despite the lack of particulars on the amount being claimed I allowed the Landlord's claim to proceed on the carpet claim as nearest to the monetary amount set out in the application.

Issue(s) to be Decided

Did the Tenant leave the carpet damaged to the point of requiring replacement?

Background and Evidence

The tenancy started in October 2014 and ended on July 31, 2016. Rent of \$1,025.00 was payable monthly. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. During the tenancy the Landlord collected a pet deposit of \$513.00. The Parties mutually conducted a move-in and move-out inspection with completed reports and copies to the Tenant. The move-out report does not indicate any damage to any carpet.

The Landlord states that the carpets in the living room and bedroom were left with stains and odors and that they had to be replaced. The Landlord states that they purchased the unit in 2014 and were told by the sellers that the carpets were installed new in 2008. The Landlord states that the carpets were replaced at a cost of \$3,200.00

for both the materials and labour. The Tenant states that both carpets were professionally cleaned at move-out and that there was one stain that was not fully noticeable in the living room. The Tenant states that no odors were left.

Analysis

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the Tenant's evidence of a minor stain and the move-out report indicating no damage to the carpets I find on a balance of probabilities that the carpets were not damaged to the extent they required replacement. I therefore dismiss the Landlord's application. I order the Landlord to return the combined security and pet deposit of **\$1,013.00** plus zero interest to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$1,013.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 17, 2017

Residential Tenancy Branch