



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act* ("Act") The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its 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 parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to an order allowing them to retain a portion or all of the security deposit?

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

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on February 1, 2015 and ended on July 31, 2016. The tenant was obligated to pay \$860.00 per month in rent plus \$35.00 for parking, in advance and at the outset of the tenancy the tenant paid a \$430.00 security deposit. The landlord testified that a week after receiving the tenant's notice that she would be moving out, he provided her a move out cleaning checklist of things that should be done and a cost breakdown of charges if they were not done. The landlord testified that the tenant participated in the written condition inspection at move in. The landlord testified that on July 29, 2016 he spoke to the tenant on the phone and she advised him that she already moved out of the unit and that that she would not be returning at any point to do the move out inspection.

The landlord testified that the unit was not left in a reasonably clean manner and that she still had time to come back and clean it or she would be charged for the cleaning charges. The landlord testified that the tenant reiterated that she would not return. The landlord testified until that phone conversation, he was not aware that she had moved out. The landlord testified that the tenant did not provide a forwarding address until August 8, 2016 and therefore could not provide the notice of final inspection in writing. The landlord testified that the new tenants were moving in on August 16, 2016 and that the cleaning was done on August 5, 2016. DM testified that the unit was not reasonably clean and required the cleaning as claimed.

The landlord is applying for the following:

1.	Suite Cleaning	\$185.00
2.	Carpet Cleaning	95.00
3.	Drape Cleaning	180.00
4.	Filing Fee	100.00
5.	Minus Security Deposit	-430.00
6.		
	Total	\$130.00

The tenant gave the following testimony. The tenant testified that the landlord did not provide two opportunities to schedule the move out condition inspection report. The tenant testified that she had issues with the building manager that was not resolved.

The tenant testified that she provided her forwarding address by email on August 8, 2016. The tenant testified that she did not agree with the cleaning charges and that she is seeking the return of double the security deposit plus her filing fee for this application.

Analysis

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

The tenant stated that she was not contacted to schedule a move out condition inspection; however she told JM that she would not return to do the inspection with the resident manager that conducted the inspections.

The tenant notified the landlord on July 29, 2016 that she moved out but didn't provide a forwarding address until August 8, 2016 by email. I find that the tenants' actions removed the ability for the landlord to schedule a move out condition inspection. The landlord was not aware that she had vacated the unit until July 29, 2016 and had no means to schedule an inspection; the second opportunity to be in writing, as he didn't have an address to serve her. The landlord had new tenants coming in and had to prepare the unit for them.

The landlord could not leave the unit empty for an indefinite amount of time waiting to see if the inspection could be arranged. In addition, the landlord offered to the tenant the opportunity to do the cleaning herself or to come to the unit to discuss the cleaning deficiencies, to which she declined. The tenant's refusal to return to the building and not provide a forwarding address within a reasonable timeframe restricted the landlord from conducting his business.

The doctrine of estoppel applies under the circumstances before me. An estoppel is a rule of law that when a person, in this case the tenant, by act or words, gives another person; the landlord, reason to believe a certain set of facts upon which the landlord takes action, the tenant cannot later to her benefit, deny those facts or say that her earlier act was improper. I find the tenant's testimony to be contradictory and unreliable.

In addition to the above, section 36 of the Act addresses the issue before me as follows:
Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

Based on all the documentation before me, the inconsistent testimony of the tenant, and on a balance of probabilities, I find that the tenant willfully chose not to return to the unit for an inspection or otherwise when asked and delayed providing her forwarding address and has extinguished her right to make a claim for the security deposit based on her actions.

The landlord provided the condition inspection report, photos, receipts, and a witness to support their claim. Based on the above I find that the landlord is entitled to the \$460.00 for suite cleaning, carpet cleaning and drape cleaning. The landlord is also entitled to the recovery of the \$100.00 filing fee.

The tenant has not been successful in their application.

Conclusion

In Conclusion, the landlord has been successful in the following claims

1.	Suite Cleaning	\$185.00
2.	Carpet Cleaning	95.00
3.	Drape Cleaning	180.00
4.	Filing Fee	100.00
5.	Minus Security Deposit	-430.00
6.		
	Total	\$130.00

The landlord has established a claim for \$560.00. I order that the landlord retain the \$430.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$130.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety.

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 16, 2017

Residential Tenancy Branch