



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNSD

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- 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 recover the filing fee for its application from the landlord, 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 tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary order as compensation for damage or loss under the *Act*, tenancy agreement or regulation?

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

Background, Evidence

Both parties agree to the following. The tenancy began on July 1, 2015 and ended on December 31, 2016. The tenant was obligated to pay \$890.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$432.50.00 security deposit and a \$50.00 fob deposit. Written condition inspection reports were conducted at move in and move out.

The tenants' agent gave the following testimony. MP testified that she is seeking a monetary order of \$790.25 which breaks down as follows; \$432.50 security deposit, \$50.00 fob deposit and \$307.75 for carpet repair. MP testified that the landlord charged for carpet repair even though they changed the flooring in the entire suite. MP testified that the fob was returned and shouldn't be charged for it. MP testified that she agreed with the charges and to sign over the deposit at the move out inspection "because I had no choice". SJ testified that MP signed over the deposits under duress and that the money should be returned.

The landlords' agent gave the following testimony. KT testified that the MP signed willingly and freely and that there was no duress or pressure to sign. KT testified that the cost of cleaning and damages in the suite far exceeded the security deposit but felt under the circumstances that the security and fob deposit was sufficient compensation for the landlord. KT testified that he explained all the deficiencies of the unit to MP including; the carpet repair, carpet cleaning, and washing of curtains. KT testified that the tenant only provided a security and fob deposit for a total of \$482.50, not the \$790.25 as alleged by the tenants. KT testified that the tenant signed over the deposit at the move out condition inspection and the matter should be considered closed.

Analysis

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

MP alleged that she signed over the deposits under duress. The landlord adamantly disputes that allegation. KT testified that there was no anxiety or pressure at the move out inspection and everything was explained to MP, to which she agreed to and signed over the deposits. The landlord gave clear, concise and credible testimony when

describing the events of the move out condition inspection and documentation to support the charges as claimed. MP has not provided sufficient evidence of duress. Based on the above and on a balance of probabilities, I hereby dismiss the tenants' application.

Conclusion

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: April 03, 2017

Residential Tenancy Branch