



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 13, 2019 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on August 2, 2017 for a month to month tenancy that the tenancy began on August 2, 2017 for the monthly rent of \$720.00 due on the last day of each month. The landlord testified that a security deposit of \$360.00 was paid. The tenancy ended when the tenant vacated the rental unit at the end of January 2019 and that the tenant provided her forwarding address on February 25, 2019 by text message.

The landlord also testified that he has returned the full amount of the security deposit by way of two separate cheques to the tenant. One cheque is dated March 13, 2019 and was in the amount of \$20.33 and the second cheque is dated March 14, 2019 in the amount of \$339.67.

The landlord submitted that he seeks compensation in the amount of \$339.67 for a replacement carpet as a result of the tenant's failure to care for the carpet. The landlord did not provide any documentary evidence of any damage to the carpet.

The landlord did submit a monetary order worksheet; a photograph of a carpet sample with a price of \$20.99 per square yard; and his correspondence to the tenant about the security deposit and damage.

The landlord testified that the carpet had been installed into the rental unit in 2017 about a week after the tenancy began. He stated that when he attended the rental unit on December 17, 2018 he noticed that the tenant had not been closing her fridge properly and that as a result it was leaking onto the carpet.

The landlord submitted that the tenant never did heed his advice and as such water leaked into the carpet for the duration of the tenancy leaving an odour in the carpet. The landlord seeks compensation to replace the carpet.

Analysis

As the landlord has testified that he has returned the security deposit I find the issue of retaining the deposit is moot and I make no findings of fact or law in relation to the security deposit.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. From the landlord's undisputed testimony, I find the landlord has established that it is possible the tenant had caused damage to the carpet and that this damage contravenes the tenant's obligations under Section 37.

However, the landlord failed to submit that he had made any attempts to clean the carpet or deal with the odour in any other way, prior to requesting a replacement carpet from the tenant. The landlord also failed to provide sufficient evidence of to establish that he had taken any steps to cost out a replacement.

I am not satisfied the landlord had intent to replace the carpet simply because he took a photograph of a carpet sample. I find it is more likely that if he intended to replace the carpet he would have an estimate provided by a supplier – instead he has submitted a guess that he has made without benefit of consideration of taxes or other charges necessary for sale and/or installation of carpeting.

As a result, I am not satisfied the landlord has established that he took reasonable steps to mitigate the damage or establish the value of the damage. Therefore, I find the landlord has failed to establish all four points required to be successful in a claim for damage to the rental unit.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety 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: July 08, 2019

Residential Tenancy Branch