



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to keep all or part of the security deposit and for a monetary order for damages.

Issues(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 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 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documents in to evidence:

- A copy of the tenancy agreement;
- A copy of the Condition Inspection Report;
- 21 photographs of the condition inside and outside of the rental unit;
- A copy of a letter to the landlord from the tenant dated September 2, 2009 with an attached email confirming the tenant accepts responsibility to pay for the cleaning of the stove element, the mark in the toilet bowl and the filling and painting of the small hole on the bathroom door;
- A copy of an email dated September 26, 2009 from the tenant below the dispute address;
- Emails to the tenant regarding various issues throughout the tenancy;
- Email correspondence between the landlords and property managers;
- A substantial volume of emails between the landlord and their tenant who moved into the dispute address after this tenant;
- Receipts for wall cleaning; carpet removal; removal of yard clippings and debris; carpet cleaning; repairing the bathroom door; painting; flooring; floor installation, floor installation supplies; and
- Several advertisements from free websites showing this rental unit and other properties in the area.

The tenant submitted into evidence the following documents:

- A written statement from the tenant outlining why he states he would not smoke in the rental unit which included 3 photographs of his child;
- A copy of an email from the landlord to the tenant dated July 13, 2009 confirming receipt of a notice from the tenant that he will be moving out at the end of the fixed term;
- A summary of the dispute document;
- Written statements from the tenant's agent, tenant's brother, agent's co-worker, tenant's mother, tenant's girlfriend
- A notice from the landlord dated July 4, 2009 regarding an inspection held on July 11, 2009;
- 59 photographs showing the condition of the rental unit on the last day of the tenancy;
- A notice from a property manager dated August 13, 2009 regarding an inspection to be held on August 18, 2009; and
- Responses to specific claims of the landlord's application.

The tenancy agreement was signed by both parties on May 6, 2009 for a fixed term tenancy that began on May 8, 2009 and ended August 30, 2009 for monthly rent of \$1,250.00. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were both paid on May 6, 2009. The tenancy agreement had an addendum that stated the tenant was not allowed to smoke on the premises.

A move in inspection had been completed at the start of the tenancy and a move out inspection was completed on August 31, 2009 and was signed by the landlord. Both parties testified that the tenant had an agent complete the inspection with the landlord but did not sign the document.

The tenant's agent, who appeared as a witness at this hearing, testified that she did not sign the document because the landlord wanted to write some additional notes regarding the reasons for the tenant not completing the inspection and the tenant's agent wanted to add some additional statements but was not allowed to by the landlord.

The landlord claims the tenant prevented the landlord from re-renting the rental unit at the end of this tenancy; that the tenant smoked in the rental unit causing damage that required replacement of carpets and painting; the tenant did not adequately clean the property and caused some minor damage to the bathroom door.

In the hearing the tenant acknowledged his email to the landlord and confirmed that he accepted responsibility for cleaning the stove, the mark on the toilet bowl and the filling and painting of the bathroom door. He further stated that he rethought the issue of carpet cleaning and also accepts responsibility to clean the carpets because of having a pet.

The landlord testified that the day of the move out inspection all the windows in the rental unit were open and that they had not noticed any smell in the rental unit. The landlord stated that she was cleaning the unit on September 2, 2009 and that she called up the tenant from the rental unit below the dispute address.

In the written statement submitted by the tenant below she indicates that she thought the smell was of smoke but that she was surprised that the respondent applicant would have smoked inside at all because she frequently saw him and his guests come downstairs and smoke outside. The landlord has provided photographic evidence of cigarette butts in the dirt just outside of the dispute address.

In the evidence provided by the landlord there were several emails between the landlords and a new tenant who claimed that she could not live in the rental unit because of the smell of smoke in the unit. In one email the new tenant notes that even with the windows wide open, the suite still smells of cigarette smoke.

The landlord's monetary claim is shown in the following table:

Description	Amount
Loss or Revenue	\$1,250.00
Carpet Replacement	\$2,195.26
Repaint Walls	\$1,000.00
Clean stove, toilet and wipe down walls	\$40.00
Dispose of yard waste	\$20.00
Rental advertisement	\$10.00
Repair bathroom door	\$168.00
Shampoo Carpets	\$172.73
Ferry Tickets to pick up rent	\$144.00
Total	\$4,999.99

Analysis

Regarding the landlord's claim for ferry tickets to pick up rent, there was no evidence provided showing that the tenant caused the landlord to take the ferry. From the tenant's written statement the tenant provided cheques to the landlord via courier. I dismiss this part of the landlord's application.

Section 37 requires a tenant, at the end of a tenancy, to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Based on the photographic evidence provided by the tenant I find the tenant met that requirement.

Having said this, the Residential Tenancy Policy Guidelines state that a tenant is expected to steam clean or shampoo carpets, even in a short term tenancy, if the tenant has had pets in the rental unit. As well, the tenant agreed to charges for the additional cleaning and to repair the bathroom door.

On the matter of the repairs to the bathroom door, I find the cost to be excessive and reduce the value of the repair to \$100.00 and in so doing find the landlord is entitled to \$312.73 for additional cleaning, shampooing the carpets and repair of the bathroom door.

In relation to the issue of disposal of yard waste, while the landlord testified there was an agreement for reduced rent in exchange for the tenant performing yard work services, there was no evidence that corroborated such an agreement. As well, there is no fence around the property preventing dogs other than the tenants from leaving excrement on the property.

The Policy Guidelines state that in the case of multi-family dwellings the landlord is responsible for yard upkeep; I therefore dismiss the landlords' claim to dispose of yard waste.

The Policy Guidelines state at the start of a tenancy a landlord must provide the tenant with clean carpets in a reasonable state of repair. The Guidelines further state in Section 37 that the useful life of carpets is 10 years.

The landlord confirmed in their testimony that the carpets were at least 10 years old, as such I find the tenant is not responsible for replacing a carpet that has completed its useful life. I, therefore dismiss the landlord's claim for all costs associated with replacing the flooring.

As to the landlord's claim for lost rent, the landlords had provided evidence that they had entered into another tenancy agreement with a third party. The fact that that tenant did not honour her tenancy agreement does not make this tenant liable for the rent the new tenant did not pay. I dismiss the landlord's application for lost rent.

The landlords provided no evidence of any expenses incurred for advertising the rental unit. And again, for the advertising of the rental unit is a result of the new tenant not honouring her tenancy agreement, this tenant cannot be held responsible.

Finally, regarding the walls, the landlord testified that the walls had been painted just prior to the start of the tenancy. The landlord provided no corroboration of this statement. However, the tenant did not dispute that it had been freshly painted before he moved in and the move in Condition Inspection Report does not identify any issues relating to painting, I therefore accept the unit was painted just prior to the start of the tenancy.

I find the evidence submitted by the landlord speaking to the issue of the odour of smoke in the rental unit as unreliable. First, there was nothing noted of the odour during the Condition Inspection. The landlord states that odour was unnoticeable because the windows were wide open on the day of the inspection, yet the landlord submitted their

new tenant's email that says even with all the windows wide open the smell was still there.

The written submission from the tenant below the dispute address confirms the tenant did smoke on the front step and in fact, she states that she was surprised that the tenant would have been smoking inside because she saw him and his guests smoking outside so frequently.

While I agree the tenant breached a material term of the tenancy agreement that is that he smoked on the premises, I find the landlord has not established that the tenant smoked within the rental unit itself causing the damage claimed. I dismiss this part of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$312.73**.

As the landlord was only partially successful with this application I dismiss his application to recover the \$50.00 fee paid for this application.

I order the landlord may deduct this amount from the security deposit, pet damage deposit and interest held in the amount of \$1,250.00 in satisfaction of this claim.

I find the tenant is entitled to the balance of the deposits and therefore I grant a monetary order in the amount of **\$937.27**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: December 08, 2009.

Dispute Resolution Officer