



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the tenant by registered mail on August 11, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to keep all or part of the security deposit and pet damage deposit?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on July 15, 2005 and ended on July 31, 2009. Rent for this unit started at \$950.00 and rose in increments to \$1,060.00. The tenant paid a security deposit of \$475 and a pet damage deposit of \$200.00 on June 07, 2005.

The landlord testifies that a move in and move out condition inspection was completed and the tenant did not sign the move out inspection report as she did not agree to it. The landlord claims that the tenant did not clean the unit thoroughly and has been charged \$40.00 for cleaning areas of the unit and \$50.00 for cleaning the balcony. The landlord testifies that at the end of the



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tenancy it was explained to the tenant that she did not need to clean the carpets as they would have to be replaced because of the stains. She testifies that the carpets were approximately one and a half years old at the start of the tenancy and at the end of the tenancy they were badly stained and could not be cleaned. The landlord testifies that the tenant had a pet bird that she believed may have caused some staining to the carpet. The tenant has been charged 40% of the total cost for replacing the carpets at an amount of \$372.96.

The landlord testifies that she did not give the tenant a copy of the condition inspection reports at the end of the tenancy because the tenant refused to sign the report. The reports were given to the tenant four days later after the tenant e-mailed the landlord to obtain a copy and after the tenants' mother had gone to the landlords' office to see the report.

The landlord requests to keep the tenants security deposit and pet damage deposit against the costs of cleaning the unit and a share of the carpet replacement. The landlord also seeks to retain \$200.00 of the tenants security deposit for administrative costs in re-renting the unit because the tenant did not provide one clear months notice. The landlord confirms that the unit was re-rented on August 01, 2009

The tenant testifies that she gave the landlord her notice to end tenancy on July 01, 2009 to end tenancy on July 31, 2009. At the time she thought this notice was sufficient and did not realize she must give one clear months notice.

The tenant testifies that she cleaned the rental unit thoroughly before she moved out including the carpets. She was told by the leasing agent for the landlord that she did not need to bother cleaning the carpets as they would be replaced. At no time was she told she would have to pay for any of the carpet replacement. The landlords leasing agent also told the tenant not to clean the balcony as the landlord had a special machine to do this to prevent water dripping on to the balconies below. She also told the tenant that she would not be charged for this. The landlord has claimed \$40.00 to have lint removed from the dryer filter and the tenant believes this is an excessive cost.

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The tenant testifies that at the start of her tenancy she took part in a move in condition inspection and after moving in found other deficiencies which she documented and has produced in evidence. This list has been acknowledged and signed by the landlords' agent at the time. This list states that the carpet is stained with orange and black marks. The tenant testifies that they have gone to three different carpet companies to obtain quotes for the replacement of the carpet in the suite and these quotes have all been substantially lower than the landlord invoice for replacement carpets. The tenant again believes the landlords' costs are extreme

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. I have applied a test for the landlords claim for damage or loss.

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation does not meet all of the components of the above test. I find that although a move out condition inspection may have been completed the landlord has not documented this on the form provided. Therefore, without this information there



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is no evidence as to what stains were on the carpet at the beginning of the tenancy and what stains were caused by the tenant during her tenancy. The tenant has provided a deficiency list signed by the landlords' agent that details that the carpet had some staining at the start of the tenancy. Therefore, I find the landlord has not conclusively shown that the tenant is responsible for the stains on the carpet and their claim for the tenant to pay \$372.96 is dismissed without leave to reapply.

The landlord is also claiming some cleaning costs relating to the unit. The tenants' agent does state that they may have forgotten to clean the lint from the dryer but the rest of the unit had been cleaned thoroughly. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. I find this is a frivolous and excessive claim of \$40.00 for cleaning lint from a dryer and therefore dismiss this section of the landlords claim.

The landlord did incur costs to clean the balcony of the rental unit of \$78.00 and has requested to retain \$50.00 for this work from the tenants' security deposit. However, as the landlord has not complied with section 35 (3) of the Act with regards to "completing a move out condition inspection report in accordance with the regulations" then pursuant to section 36(c) the landlord has extinguished their right to keep all or part of the security or pet damage deposit to offset this cost. Therefore, this section of the landlords claim is dismissed without leave to reapply.

The landlord has requested to keep \$200.00 from the tenants' security deposit for costs incurred in re-advertising the unit for rent as the tenant did not give one clear months notice. The unit was re-rented on August 01, 2009. I find the landlord would have had to advertise the unit for rent during July, 2009 in order to find new tenants and by the landlords leasing agents witness statement the tenant was cooperative with her actions in allowing new tenants to view the unit



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during July, 2009. The landlords have mitigated their loss in rent because they did re-rent the unit for August 01, 2009 the day after the tenant moved from the unit.

A further find that the tenant gave the landlord her forwarding address in writing on August 01, 2009. The landlord had 15 days to return the tenants security deposit or apply for dispute resolution to keep it. The landlord made their application to keep the tenants security and pet damage deposits on August 11, 2009. However as the landlord has failed to provided sufficient evidence to support their claim to keep the tenants security and pet damage deposits for damages or cleaning to the rental unit, the tenant is entitled to double her security and pet damage deposits plus accrued interest pursuant to section 38 (6)(b). The tenant is entitled to a Monetary Order for the following amount.

Double the security and pet damage deposits	\$1,350.00
Total amount due to the tenant	\$1,373.91

Conclusion

I HEREBY ORDER the landlord to return double the tenants security and pet damage deposits plus any accrued interest to an amount of **\$1,373.91**.

The landlords' application is dismissed 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: December 04, 2009.

Dispute Resolution Officer