

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to retain all or a portion of the tenant's pet damage and security deposits in partial satisfaction of the monetary order requested, pursuant to section 38 and for authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's pet damage and security deposits? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced initially as a six-month fixed term tenancy on May 1, 2009. After the initial fixed term ended, the tenancy continued as a periodic tenancy. Monthly rent was set at \$1,500.00, payable on the first of each month.

The tenant vacated the premises on May 29, 2010. On May 30, 2010, the parties conducted a joint move-out condition inspection. Although joint move-in and move-out condition inspections occurred and reports were prepared, neither party provided copies of those reports. Both maintained that the other party agreed to copy those reports and forward copies to the other party, but failed to do so.

The landlord entered written evidence that the tenant was responsible for \$2,775.00 in damage during the course of this tenancy. He testified that the tenant's dogs damaged

the floors during this tenancy. He entered into written evidence a copy of a \$1,575.00 estimate from a flooring company to refinish the damaged oak flooring. The landlord's request for a monetary award included the following items.

Item	Amount
Oak Flooring Refinishing	\$1,575.00
Painting	400.00
Cleaning	200.00
Damage to Kitchen Counter	350.00
Back Yard Weeding in Gardens	100.00
Cleaning Garage & Outside House	50.00
Carpet Stains	100.00
Total Monetary Award Requested	\$2,775.00

The tenant provided written and oral evidence to support her assertion that much of the damage that the landlord was claiming was present when she commenced her tenancy. She provided a written statement from an individual who was present when she moved into the rental premises confirming that some of the damage claimed by the landlord was present when she moved into the rental unit. The tenant provided undisputed testimony that she had the premises professionally cleaned when she left the rental unit. The tenant also said that she remained willing to let the landlord keep her \$500.00 pet damage deposit as she agreed that her pets had contributed to the existing damage to the premises.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As noted above, the tenant challenged the landlord's assertion that the damage to the rental premises occurred during her tenancy. A completed and signed joint move-in and move-out condition inspection report would have clarified whether the damage occurred before the tenant commenced this tenancy. The most convincing written evidence before me as to the condition of the premises at the commencement of the tenancy was the statement from the person who assisted the tenant during her move to the rental premises. However, this document was written 1 ½ years after the tenant's move and the witness did not attend the hearing. Since the landlord failed to provide a copy of the move-in and move-out condition inspect reports to clarify such matters, I dismiss most of the landlord's claim for a monetary award.

As the tenant agreed that some damage was caused by her pets, I allow the landlord to retain the tenant's pet damage deposit of \$500.00. I also accept the testimony from the landlord and his wife regarding the lack of maintenance and upkeep performed by the tenant to the yard at the rear of the property where the tenant's dogs had access. Although the tenant maintained that the landlord knew that she could not look after the fenced backyard because of an injury she sustained before she moved to the rental premises, I do not accept her claim that yard maintenance for this single family rental unit was the landlord's responsibility. As such, I allow the landlord to retain \$100.00 from the tenant's security deposit. No interest is payable on the pet damage and security deposits over this period.

Since the landlord has been partially successful in his application for dispute resolution, I allow him to recover his \$50.00 filing fee from the tenant by retaining this from the tenant's security deposit.

The tenant testified that she has not cashed a May 30, 2010 cheque in the amount of \$270.00 cheque that the landlord provided to her in response to her request for the return of her security deposit. Since this cheque may no longer be negotiable, I directed the tenant to return it to the landlord, as my calculation of the monetary award owing will not take this cheque into account.

Conclusion

I allow the landlord to retain the tenant's pet damage deposit of \$500.00. I allow the landlord to retain \$150.00 from the tenant's security deposit in satisfaction of the lack of maintenance to the back yard of the rental premises and for recovery of the landlord's filing fee for this application. I issue a monetary Order of \$600.00 in the tenant's favour as follows which requires the landlord to return the remaining portion of the tenant's security deposit to the tenant.

Item	Amount
Damage Caused by Pets during Tenancy	\$500.00
Back Yard Maintenance Required	100.00
Recovery of Filing Fee for this application	50.00
Less Pet Damage Deposit	-500.00
Less Security Deposit	-750.00
Total Monetary Order	(\$600.00)

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.