



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MSD MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began June 1, 2009 and ended on May 31, 2010. A subsequent month to month tenancy agreement was entered into beginning June 1, 2010. Rent was payable on the first of each month in the amount of \$1,664.00. On approximately April 30, 2009 the Tenant paid a security deposit of \$1,000.00 and after a previous dispute resolution hearing the Tenant was ordered to reduce her November 2010 rent by \$200.00 as refund of the overpayment of the security deposit collected by the Landlords. The Tenant vacated the property by 10:00 p.m. on June 1, 2011 and returned the keys and possession of the unit to the Landlord at that time. No move in or move out inspection reports were completed.

I heard undisputed testimony that parties had entered into a written agreement whereby the Tenant agreed to have the following deducted from her security deposit: \$390.04

for utilities (Hydro & Water); \$55.00 for overholding the unit for June 1, 2011; and \$280.00 for carpet cleaning.

In addition to the previously agreed amounts the Landlords are seeking three additional days of overholding \$165.99 (3 x \$55.33) because his parents were not able move into the unit until the carpets were cleaned and dry and \$120.00 for having to clean and dust the rental unit. The Landlord stated he was not able to schedule a carpet cleaner to do the work until June 4, 2011 which meant his parents could not move in as scheduled. Also, he alleged the Tenant did not clean the unit properly causing his mother to have to spend approximately eight hours cleaning.

The Tenant testified she was not in agreement to the additional charges being claimed here. She stated that carpet cleaners clean carpets while people are living in the houses all the time so that should not have prevented anyone from moving in. Also, she is a cleaner by profession and she spent a lot of time cleaning this unit. She cleaned the entire house which included, among other things, cleaning the stove, oven, pulling out the fridge and stove, dusting, and washing walls. She commented on how there was no mention to her about the house not being clean enough when she moved out even though the Landlord was at the rental unit during her move out and saw her wiping the cupboards, inside and out.

The Landlord confirmed there was no written notice of a move out inspection provided to the Tenant.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenant had previously agreed, in writing, for the Landlord to retain \$725.04 of her security deposit (\$390.04 utilities; + \$55.00 overholding; + \$280.00 carpet cleaning).

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the rental unit was not adequately cleaned at the end of the unit and that the Tenant over held the unit June 2, 3, and 4th causing the Landlords to suffer a loss. Accordingly, the evidence before me pertaining to why his parents could not move in sooner and the unit requiring additional cleaning was verbal testimony. I find the disputed verbal testimony insufficient to meet the Landlords burden of proof. Therefore I dismiss the Landlords' claim for three days additional overholding charges and cleaning charges.

Given the Landlords were not successful in their claim for charges other than what the Tenant had previously agreed to, I decline to award recovery of the filing fee.

Based on the aforementioned, the Landlord is hereby ordered to return the **\$74.96** (\$800.00 + \$0.00 interest) – (\$280.00 + 55.00 + 390.04) security deposit balance due to the Tenant forthwith.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order for **\$74.96**. This Order is legally binding and must be served upon the Landlords.

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: September 09, 2011.

Residential Tenancy Branch