Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for an order to retain a portion of the security deposit in full satisfaction of the claim and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of double the security deposit under section 38 of the Act.

Both parties appeared and were affirmed, the hearing process was explained, the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Matters

This is the second hearing I have had involving the same parties and a dispute over the same issue. On December 22, 2011, I dismissed the Applications of both parties (the file numbers appear on the cover sheet to this decision), with leave to reapply.

The Landlord's Application was dismissed due to an error that appears to have been made by the Branch in preparing the Application for Dispute Resolution for service upon the Tenant. The error was that the second or back page of the Landlord's Application, which sets out the particulars of the claim, had not been photocopied and therefore, had not been served on the Tenant.

As it appeared the error had been made by the Branch in processing the Application, I made a finding and an order that the Landlord had filed the Application on time for the purposes of section 38 of the Act, and that the Landlord would not be prejudiced under the time limits of section 38 by reapplying in a timely fashion. I note this finding and

order was made pursuant to section 66 of the Act, which allows a Dispute Resolution Officer to extend a time limit under the Act.

The Tenant's Application was dismissed, with leave to reapply, as he did not provide an address for service in his Application.

For the files in this hearing the Tenant reapplied on February 3, 2012, and the Landlord reapplied on February 16, 2012, and a hearing was scheduled for April 3, 2012.

The Tenant requested an adjournment of the April 3 hearing, based on a medical need, and the Landlord agreed to the adjournment. The hearing was re-scheduled for May 31, 2012.

During the hearing on May 31, the Tenant argued that the Landlord had not reapplied in a timely fashion.

In the particulars of the Landlord's Application it is noted they did not reapply until they had been served with the Tenant's new Application, as they did not have the mailing address for service.

Based on the evidence, testimony and submissions of the parties, and on a balance of probabilities, I find that the Landlord did apply in a timely fashion once they had the Tenant's mailing address for service.

Issue(s) to be Decided

Is the Landlord entitled to retain a portion of the security deposit?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

This tenancy began on December 1, 2010, with the parties entering into a written, month to month tenancy agreement. The Tenant paid a security deposit of $375.00 on November 23, 2010, and the monthly rent was $750.00, payable on the first day of each month.

The parties performed an incoming condition inspection report at the start of the tenancy on November 25, 2010.

On September 30, 2011, at the end of the tenancy, the parties performed an outgoing condition inspection report. It is noted on the outgoing condition inspection report that the Tenant disputes the Landlord retaining funds from the security deposit for carpet cleaning/shampooing. (There was also a note about a dispute over personal property left at the rental unit by the Tenant, however, this was apparently resolved by the parties and the issue was not before me.)

The report notes that the Tenant signed the outgoing condition inspection report on the basis of it being, “subject to an arbitration”.

The Landlord withheld $90.00 for carpet cleaning/shampooing and $50.00 for a filing fee for an Application. The parties agree that the Landlord returned $235.00 to the Tenant within 15 days of the end of the tenancy, and filed a claim to retain $140.00 from the deposit for carpet cleaning and the filing fee for the Application as described above.

The Tenant argues that the carpets did not need cleaning after his tenancy, as it was only 10 months long. The Tenant testified he did not wear shoes in the rental unit and had very few visitors during the tenancy. He argues he caused no extraordinary damage to the carpets.

The Tenant submits that the carpets were very old and that at the start of the tenancy, the incoming condition inspection report noted there were a few burns holes in the carpet.

The Tenant further argues that the Landlord did not clean the common area hall carpets at the building where the rental unit is located and therefore, has applied a different standard of cleanliness for the rental unit than the hallway.

The Tenant testified that he had no pets in the rental unit, but that he smoked in the rental unit during the tenancy. He testified he only smoked with the windows open.

In reply, the Agent for the Landlord argued that the age of the carpets is not relevant, as the carpets were agreed to be in satisfactory condition in the incoming condition inspection report.

The Landlord argues that the Tenant agreed to carpet cleaning in section 23 of the tenancy agreement, which states,

> “The tenant is responsible for periodic cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at

> the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy."
>
> [Reproduced as written.]

The Agent for the Landlord testified that the carpets had been professionally cleaned at the start of the tenancy. The Agent testified that the Tenant should have cleaned the carpet professionally at the end of the tenancy, but failed to do so. In evidence the Landlord provided a receipt for the carpet cleaning in the amount of $84.00.

The Agent for the Landlord further testified that smoking in the rental unit caused the odour of smoke to be in the carpet.

In reply, the Tenant testified that smoking was allowed in the rental unit, and that he did regular maintenance by vacuuming the carpets. The Tenant also stated that the Landlord did not claim for cleaning the window coverings, even though these would have been affected by the smoke too.

The Tenant contends that the tenancy agreement is superseded by the Act. The Tenant's position is that the Act does not require him to have the carpets professionally cleaned or shampooed at the end of the tenancy. The Tenant argued that the Act only required him to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

Lastly, the Tenant argues that even if the Landlord is successful in its claim for the carpet cleaning it should not be awarded the $50.00 filing fee for the Application, since the Tenant's Application was not frivolous or unreasonable.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Under section 23 of the tenancy agreement the Tenant was required to have the carpets professionally cleaned at the end of the tenancy as they were professionally cleaned at the start of the tenancy. This is a common clause in many tenancy agreements and I do not find that the clause in this tenancy agreement is contrary to the Act or an attempt to contract outside of the Act, which is prohibited by section 5 of the Act.

Section 37(2)(a) of the Act required the Tenant to return the rental unit to the Landlord reasonably clean and undamaged, except for reasonable wear and tear. As "reasonably clean" is a broad definition of what is required, the Branch has provided Policy Guidelines to clarify the responsibilities of both landlords and tenants under the

Act. These Policy Guidelines are not only based on the Director's interpretation of the Act, but also on standard practices and procedures which have been developed and adopted over the years in the normal course of the residential tenancy business.

Policy Guideline #1, sets out the following:

> **CARPETS**
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> 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
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> 2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
>
> 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
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> 4. **The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant,** has had pets which were not caged or **if he** or she **smoked in the premises.**
>
> [**Emphasis** added.]

Based on the Act, the tenancy agreement and Policy Guideline 1, I find that the Tenant should have had the carpets professionally cleaned at the end of the tenancy as he smoked in the rental unit.

I find the age of the carpets would only be relevant if the Landlord was seeking to have the Tenant pay for replacement of the carpets, and this is not the case here. Likewise, the condition of the common area hallway carpets is irrelevant to the issue of the condition of the carpets in the rental unit. The Tenant was only responsible for cleaning the rental unit carpets.

Therefore, I find the Landlord has established a claim for carpet cleaning in the amount of $84.00, and I order the Tenant to pay this, as well as the Landlord's $50.00 filing fee for the Application. Whether or not the Tenant's claim was reasonable or vexatious is not relevant to the issue of the Landlord's filing fee for the Application. Under section 72 of the Act I order the Tenant to pay the filing fee for the Application.

I dismiss the Tenant's claim for return of double the security deposit.

Under section 38 of the Act, the Landlord had 15 days from the later of the end of the tenancy or receipt of the Tenant's forwarding address in writing, to either return the deposit or file a claim against it. As described above, the Landlord initially filed their claim within the required 15 days, and then reapplied (with leave) within 15 days of receipt of the Tenant's second Application, when they had the mailing address for service of their second Application. Therefore, I find the Tenant has failed to prove the Landlord has breached section 38 of the Act and the Tenant is not entitled to double the security deposit.

Having found the Landlord has established a claim of **$134.00**, I order the Landlord to return the balance held of **$6.00** to the Tenant. I grant and issue the Tenant a monetary order in those terms.

Conclusion

The Tenant's claim is dismissed. The Landlord has established a monetary claim for carpet cleaning and the return of the filing fee for the Application.

I order the Landlord may retain $134.00 from the $140.00 held from the security deposit in full satisfaction of the claim, and order the Landlord to pay the Tenant the balance due of **$6.00**. The Tenant is issued a monetary order in this amount.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 31, 2012.

Residential Tenancy Branch