

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order to retain the security deposit in full satisfaction of their claim for damages to the rental unit. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Has the landlord proven that the tenants have damaged the rental unit thereby entitling them to retain the security deposit in satisfaction of their claim for damages?

Background and Evidence

The parties agreed that the tenancy began in February 1999 and ended on February 2, 2009. The landlord testified that the carpets were newly installed at the beginning of the tenancy and at the end of the tenancy had numerous stains, including one which appeared to be a burn. The landlord further testified that there was a crack on one of the doors and provided a photograph of that door and that there were nail holes in the walls. The landlord provided other photographs, but did so by way of a facsimile transmission. The subject matter of the faxed photographs could not be determined as they appeared completely black and other than the photograph of the cracked door, the photos were therefore not considered. The landlord estimated that it would cost \$10,000 to replace the carpets and \$1,000 to repair the walls, but did not provide professional estimates or any other corroborating evidence.

The tenants testified that some if not all of the carpet damage could be attributed to flooding which occurred as a result of the landlord's failure to perform repairs. The tenants further testified that the crack in the door had always been there.

Analysis

The landlord is obligated to prove both liability and quantum. The landlord cannot have expected to receive the rental unit back with carpets in as new condition after a 10-year tenancy. The only damages to which the landlord would have been entitled would have been damages which were beyond reasonable wear and tear. As the landlord's photographs were unhelpful, it is impossible for me to determine whether the alleged damages to the carpets and walls were beyond reasonable wear and tear. While it appears the tenants caused the crack in the door, I find the landlord has not proven the value of the door or the cost to repair it. I find that the landlord has failed to prove both the liability and quantum of the claim and dismiss the application.

Pursuant to the direction in Residential Tenancy Policy Guideline #17, I order the landlord to return the \$500.00 security deposit and the \$55.09 in interest to the tenants forthwith. I grant the tenants an order under section 67 for \$555.09. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed. The landlord is ordered to return the security deposit and interest to the tenants.

Dated May 04, 2009.