



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$1447.08 as well as a request to retain the full security deposit plus interest. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee paid for this hearing.

Background and Evidence

The applicants testified that:

- The tenant turned off the auto timer on the dehumidifier in the rental unit and as a result there was substantial condensation damage caused to the window area.
- The landlord had to have the condensation damage repaired at a cost of \$1323.00.

Residential Tenancy Branch
Ministry of Housing and Social Development

- The tenant also vacated before the end of the lease and is therefore liable for liquidated damages of \$600.00 as per clause 3 of the tenancy agreement.

The applicant is therefore requesting a total claim of \$1923.00 less a security deposit of \$465.92 and an access card cost of \$10.00.

The respondent testified that:

- He did not turn off the auto timer on the dehumidifier.
- This water leakage problem is a building defect that he pointed out to the landlord immediately when he found the paint peeling and cracks on the window sill in 2005.
- There is water leakage from the outside walls that was never repaired and staining and mould can be seen on the ceiling where the water is leaking in.
- He does not therefore believe that he is responsible for any the water damage to this rental unit.
- He was not given the copy of the tenancy agreement that he signed on April 24, 2008 and the copy that he was finally given in April 2009 had been altered by the landlord.
- The agreement has been altered in clause 3, and the sum of \$600.00 has been written in.

The respondent is therefore asking that the landlord's full claim be dismissed and that his full security deposit plus access card fee be returned to him.

Analysis

It is my decision of the landlord has not met the burden of proving that the water damage around the window in the rental unit was a result of any negligence on the part of the tenant. I'm not convinced that the damage was caused by condensation and I find the tenant's theory that the damage was caused by leakage to be very plausible.

The claim for water damage is therefore dismissed

I will allow the claim for liquidated damages; however not the amount claimed by the landlord. Close examination of the tenancy agreement does show that the sum listed in the liquidated damages clause appears to have been altered from \$500.00 to \$600.00 and although the landlord claims that the tenant was well aware of this change the landlord has not met the burden of proving that claim. Since neither party has initialled the change I will only allow \$500.00 as liquidated damages.

I further ordered that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.

Conclusion

The total amount of the claim that I have allowed is \$550.00. The landlord holds a security deposit plus interest totalling \$465.92 and an access card fee of \$10.00 for a total of \$475.92.

The landlord's right to claim against the security deposit has been extinguished for failing to complete a move in and move out inspection report; however rather than issue two orders, one to the tenant for the security deposit plus interest, and one to the



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

landlord for the \$550 I've allowed, I set off the amount owed to the tenant against the amount allowed in this claim and have issued an order for the tenant to pay the difference of \$74.08 to the landlord.

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: June 23, 2009.

Dispute Resolution Officer