



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MND, MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning and repair to the rental unit and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

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

Issues to be decided

Has the landlord established a claim for costs incurred to repair the rental unit? Is the landlord entitled to retain the security deposit and to recover the filing fee?

Background and Evidence

The tenancy started on September 26, 2008 for a short term of two months. Rent was set at \$2,200.00 per month. The tenancy agreement was renewed on December 01, 2008 for a fixed term ending May 30, 2009. The monthly rent for was reduced to \$1,950.00 for the second term. The rental suite was furnished. The tenant paid a security deposit in the amount of \$2,200.00. A clause in the tenancy agreement under "Departure Cleaning Fee" states that \$200.00 will be retained from the security deposit when the tenancy ends.

The landlord stated that at the time of the move in, a visual inspection was conducted in the presence of the tenants and there were no discrepancies. A report was not completed. The landlord stated that it was not his practice to fill out a report for short term tenants. However, the landlord has filed reports for a move out inspection conducted just prior to the start of this tenancy and a move in inspection conducted with the tenant that moved in after this tenancy ended.

The landlord stated that a move out inspection at the end of this tenancy was not conducted because he was out of town on the day the tenant moved out (May 26, 2009) and he returned on June 02, 2009.

However, the landlord contradicted himself by stating that he conducted a move in inspection with the new tenant and has filed this report which is dated June 01, 2009. To explain this inconsistency, the landlord stated that the inspection was actually done on June 05, 2009 and not on June 01, 2009. The report was dated June 01, 2009 to coincide with the start date of the new tenancy.

This report (move in inspection with the next tenant) shows some discrepancies including a sticky floor in the kitchen and a greasy stove hood. It also shows damage to the hardwood floor and fireplace mantel. The landlord stated that this report represents the condition of the unit as the tenants (respondents) left it. Therefore, the landlord is relying on the move in inspection report of the new tenant to serve as the move out inspection report for the respondents.

The landlord has filed a letter written by the person who cleaned the unit after the tenancy ended dated June 01, 2009 and describes the cleaning work done and the hours spent to complete the job. The landlord is claiming \$575.00 for cleaning.

Despite several hours spent cleaning the unit, the move in inspection for the next tenant also conducted on June 01, 2009 as per the report date, indicates that the kitchen floor was sticky and the hood was greasy. The landlord explained this discrepancy by stating that the new tenant's standard of cleanliness was higher than that of the person who cleaned the unit.

The landlord is claiming \$800.00 to fix damage to the dry wall. The tenant denies having caused any damage to the dry wall and the landlord has not filed any photographs or receipts to support his claim.

The landlord is also claiming \$4,000.00 to fix damage to the hardwood flooring. The tenant stated that when they moved in they did not notice that the foot of the sofa of this furnished suite was broken. The sofa was usable and therefore the tenant did not realize that the foot had a rough edge which put scratches in the hardwood floor. The landlord was not sure whether the damage to the foot of the sofa was present prior to this tenancy or was caused by this tenant. The tenant denied having caused damage to the foot of the sofa.

The landlord has not filed any photographs of the damage and has not yet fixed it. He stated that the entire floor will have to be replaced and this was done in another similar unit at a cost \$16,000.00. Based on the evaluation of an adjuster, the landlord estimates it will cost the tenants approximately \$4,000.00 to fix the area of hardwood floor that is damaged by the foot of the sofa.

The landlord is claiming \$175.00 to repair the mantel piece, but again has filed no evidence to support this claim.

The landlord has also filed a list of items that he states are missing from the furnished unit. The tenant denied having taken these items but took responsibility for the damage to the bed skirt. The landlord stated that it was ripped and it cost him \$40.00 to replace it. He has filed a receipt which shows an item named "domestic" for \$38.00.

Overall the landlord has applied for the following:

1.	Repairs to Dry wall	\$800.00
2.	Replace hardwood floor	\$4,000.00
3.	Repairs to Fireplace	\$175.00
4.	Cleaning costs	\$575.00
5.	Articles missing from unit	\$538.00
6.	Filing fee	\$100.00
	Total	\$6188.00

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. 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. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The testimony of the tenant and the landlord is conflicting with regard to the damage to the unit. The tenant denies having caused damage to the walls, flooring and mantle and also denies having taken items from the furnished suite. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord has not filed any photographs, receipts or other evidence to support his claim for repair to the dry wall (\$800.00), replace the hardwood (\$4,000.00), repair to the mantle of the fireplace (\$175.00), cleaning (\$575.00) and the items on his list of missing items except for a receipt for the cost of the bed skirt.

Based on the sworn testimony of both parties, I find that the landlord's claim does not satisfy the components of the above test for damage and loss claim. Since the landlord has provided a receipt for the purchase of a bed skirt, I will award him \$40.00 towards this cost. As per the tenancy agreement, the tenant agreed to allow the landlord to deduct \$200.00 from the security deposit for cleaning.

I find that the landlord has established a claim of only \$40.00 out of his claim for \$6,088.00 and is therefore not entitled to the recovery of the filing fee. I find that the tenant is entitled to the return of the security deposit plus accrued interest with a deduction of \$40.00 for the bed skirt and \$200.00 for cleaning as per the tenancy agreement. I hereby order that the landlord return the balance of the security deposit to the tenant within 15 days of receiving this decision.

Conclusion

The landlord may retain \$240.00 from the security deposit of \$2200.00 and must return the balance plus accrued interest to the tenant.

Dated August 31, 2009.

Dispute Resolution Officer