



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and a cross-application by the tenants for the return of their security deposit. Both parties participated in the conference call hearing.

Approximately 5 minutes before the end of the hearing, the landlord announced that he had said all he intended to say and disconnected from the conference call. The hearing continued in his absence.

The landlord provided evidence to both the Residential Tenancy Branch and to the tenants, but that evidence was lost or misplaced and was not in the file. I confirmed with both landlord and tenants the details of that evidence and the hearing proceeded without my having viewed that evidence as I was fully aware of the content of that evidence.

Issues(s) to be Decided

Is the landlord entitled to recover the cost of repairing damage to the rental unit as claimed?

Are the tenants entitled to recover their security deposit?

Background and Evidence

The parties agreed that the tenants paid a \$537.50 security deposit on June 1, 2005 and that the tenants vacated the rental unit on July 25, 2009. The tenants testified that they gave the landlord their forwarding address in writing on July 30, 2009. The parties further agreed that at the beginning of the tenancy, another tenant who used to live in the rental unit had filled out a condition inspection report. This report was submitted into evidence.

The parties agreed that the landlord was entitled to recover \$12.60 as the cost of repairing blinds in the rental unit.

The landlord claimed that the tenants caused damage to the carpet in one of the bedrooms and that the landlord had to replace the carpet at a cost of \$438.96 which included labour. The landlord provided a copy of the invoice for the carpet replacement. The landlord claimed that the carpet was approximately 6-7 years old and that it had no damage at the beginning of the tenancy, but at the end had numerous stains, burn marks and areas where gum was ground into the carpet. The landlord provided photographs of the carpet to the Residential Tenancy Branch, but because he did not provide copies of those photographs to the tenants, the photographs were not considered. The tenants testified that the carpet had stains at the outset of the tenancy and denied having caused further damage. The tenants provided videotapes of the rental unit to both the Residential Tenancy Branch and to the landlord. The videotapes show two stains and one burn mark on the carpet in question.

The landlord claimed that the tenants caused damage to the door of the rental unit, the door to the lobby and the door to the exterior when they were moving their belongings. The landlord claimed to have been at the residence when a couch was being moved and testified that he witnessed the tenants and those who were assisting them when they damaged the doors. The landlord provided a copy of the invoice for repairs to the

three doors which totalled \$749.28. The tenants denied having caused any damage to the doors.

Analysis

The landlord bears the burden of proving his claim on the balance of probabilities. First addressing the claim for the cost of replacing the carpet, I find that the landlord has failed to prove that the damage alleged was caused by the tenants or that if it was, it exceeds what may be characterized as reasonable wear and tear. At the beginning of the tenancy the condition inspection report was not completed by the landlord as is required by the Act and I am not satisfied that it accurately reflects the condition of the unit. The only corroborating evidence of damage to the carpet is found in the tenants' video and I find that the stains are minimal. The claim for the cost of replacing the carpet is dismissed.

Turning to the claim for the cost of the doors, the tenants denied that the doors were damaged at all or that they caused any damage. The videotapes do not show damage to the doors. In the absence of corroborating evidence such as photographs showing damage and because two of the doors were in common areas, I find that the landlord has failed to prove that there was damage or, if there was damage, that it was the tenants and not other occupants of the building who caused the damage. The claim for the cost of door repairs is dismissed.

As the tenants have acknowledged responsibility for repairing the blinds, I award the landlord \$12.60. As the landlord has been only partially successful in his claim, I find it appropriate to award him \$10.00 of the \$50.00 filing fee paid to bring this application for a total award of \$22.60.

I find the tenants are entitled to the return of their security deposit and the filing fee paid to bring their application. The landlord currently holds \$537.50 as the security deposit. \$19.04 in interest has accrued to the date of this judgment. The tenants are awarded \$606.54 which represents the security deposit, interest and the \$50.00 filing fee. I find it

appropriate to set off the landlord's \$22.60 award as against the tenants' \$606.54 award which leaves a balance of \$583.94 payable to the tenants. I grant the tenants a monetary order under section 67 for \$583.94. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$22.60. The tenants are awarded \$606.54. After set-off, the landlord is ordered to pay to the tenants \$583.94.

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: December 08, 2009.
