

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This is the Landlord's application a monetary order for damages and compensation for damage or loss; to apply a portion of the security deposit towards satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant..

I reviewed the documentary evidence provided prior to the Hearing. The Landlord and Tenant gave affirmed testimony; the Landlord's Interpreter affirmed to interpret the Cantonese language to the English language and the English language to the Cantonese language to the best of her skill and ability; and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to retain a portion of the security deposit in satisfaction of a claim for damages?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord gave the following testimony:

- The Landlord received the Tenant's forwarding address in writing on September 16, 2009.
- The Landlord and Tenant did a walk through inspection of the rental unit at the end of the tenancy. The Tenant verbally agreed that the Landlord could retain a portion of the security deposit for damages. No written Condition Inspection Report was done.
- The Tenant provided a security deposit in the amount of \$375.00 in two payments. On March 13, 2004, the Tenant paid \$312.50. Three years later, the Landlord and Tenant entered into another tenancy agreement and the Tenant

provided the Landlord with an additional \$62.50 towards a security deposit on June 1, 2007.

- When the Tenant moved out of the rental unit, he did not clean the rental unit. The oven had not been cleaned and the Landlord spent hours scrubbing the oven with several cans of Easy Off. The exhaust fan in the kitchen was so filthy, the Landlord chose to replace it rather than spend more hours cleaning it. The Landlord had to repair and repaint the ceiling in the bathroom below the Tenant's bathroom, due to a flood in the Tenant's bathroom. The flood occurred because the Tenant was doing laundry in his bathtub and the tub over-flowed.
- The Landlord is applying for a monetary award as follows:

Description of claim	Amount requested
Cleaning (8 hours labour at \$12.50 an hour)	\$100.00
Paint	\$31.97
Brushes	\$13.97
Replace exhaust fan in kitchen	\$52.49
Oven cleaner	\$26.97
Total	\$225.40

The Tenant gave the following testimony:

- The Landlord returned \$88.72 of the security deposit to the Tenant. The Tenant has cashed the cheque.
- The Tenant cleaned the rental unit prior to the end of the tenancy and disputes the Landlord's claim for cleaning.
- The Tenant denies causing a flood in his bathroom. The Tenant submitted that the water damage was caused because the Tenant's bathroom was not properly maintained by the Landlord.
- The Tenant denied agreeing to allow the Landlord to deduct anything from the security deposit.

Analysis

The Act requires a landlord and tenant to perform a written Condition Inspection Report when the tenant moves in, and again when the tenant moves out of the rental unit. The onus is on the landlord to arrange for a meeting in order to perform the inspection with the tenant. In this tenancy, there was no Condition Inspection Report done, either when the Tenant moved in, or when the Tenant moved out.

This is the Landlord's application and therefore the Landlord must prove that the Tenant caused the damage the Landlord alleges. This Hearing was challenged by the contradictory testimony of the Landlord and the Tenant with respect to the condition of the rental unit when the Tenant moved out. In the absence of documentary evidence to support the Landlord's claim, I find that the Landlord has not proven he is entitled to a monetary order for damages and I dismiss the Landlord's claim.

The Landlord has not been successful in his application and is not entitled to recover the filing fee from the Tenant.

I order that the Landlord return the full security deposit, together with accrued interest, to the Tenant. I hereby provide the Tenant with a Monetary Order, calculated as follows:

Security deposit	\$375.00
Accrued interest on \$312.50 from March 13, 2004	\$11.06
Accrued interest on \$62.50 from June 1, 2007	\$1.50
Less partial refund paid to Tenant	<u>-\$88.72</u>
Total monetary award	\$298.84

Conclusion

The Landlord's application is dismissed without leave to reapply.

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$298.84. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: January 26, 2010.
