

DECISION

Dispute Codes OPL, MND, SS, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for damage to the rental unit, site or property, an Order to keep all or part of the security deposit and pet damage deposit and to recover the cost of the filing fee. At the outset of the hearing the landlords withdrew their application for an Order of Possession as the tenant has moved from the rental unit and withdrawn their application for Substitute Service.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 05, 2010. Mail receipt numbers were provided by the landlord's in evidence. The tenant was deemed to be served the hearing documents on February 10, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order for damages and cleaning to the unit?
- Are the landlords entitled to keep all or part of the security and pet damage deposits?

Background and Evidence

This tenancy started on February 11, 2009. This was a fixed term tenancy with an expiry date of January 15, 2010. The tenant paid a monthly rent of \$1,600.00 which was due on the 28th or

29th of each month. The tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00 on February 11, 2009.

The landlords testify that the tenant ended the tenancy on December 27, 2009 before the end of the fixed term. The tenant met with one of the landlords and gave her a letter dated December 27, 2009 that states: "that as of today he has returned the keys to the rental unit". The landlord indicated to the tenant that the garbrator was broken, the stove door was broken and no cleaning had been done in the unit. The landlord filled in this information on the tenants' letter which states that the cost of these repairs or replacements will be determined. The tenant signed this agreement for repairs, replacement and cleaning costs.

The landlords testify the tenant did not pay the rent for the remaining term of his tenancy but they do not intend to pursue the tenant for this amount. The landlords have received quotes for the garbrator; one at a cost of \$259.00 and one at a cost of \$379.00, quotes for the stove door at a cost of \$190.00. The rental unit took over 10 hours to clean but the landlords are happy to accept 10 hours cleaning costs at \$35.00 per hour to a sum of \$350.00. The landlords also claim the rental unit required repainting as the tenant smoked in the unit and the landlords had to repaint the unit to get rid of the smell of smoke at a cost of \$170.00. The landlords claim that they lived in the unit prior to the tenant and did not smoke due to health reasons. However, this was not mentioned during the move out walkthrough to the tenant or documented on the agreement which the tenant signed.

The landlords seek to keep the tenants' security deposit of \$800.00 and part of the pet damage deposit of \$800.00 in satisfaction of their claim.

The landlords testify that the tenant sent them his forwarding address by e-mail on January 21 after repeated requests for this so they could return the remainder of his deposit and they applied to keep part of these deposits within 15 days.

Analysis

I have carefully reviewed the evidence before me including the affirmed testimony from the landlords. The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find the tenant did sign an

agreement with the landlord concerning the damage to the stove door, garbrator and cleaning of the unit. By signing this agreement I find the tenant acknowledges that this damage and cleaning was caused during his tenancy. I have applied a test for damage or loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.
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In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord's evidence did not contain the receipts for the repairs to the stove or garbrator. The landlords were given an opportunity to re-send these receipts in evidence to determine the actual cost of the repairs; however the landlords have failed to do so. I therefore find the landlords have not met all the components of the above test for the stove door and garbrator repair. Consequently this section of the landlords claim is dismissed with leave to reapply.

I find the landlord's have established their claim for cleaning the rental unit and have acted reasonable in their demands for cleaning costs. Therefore, I find the landlords are entitled to recover this cost from the tenants and may deduct it from the security deposit held by them. However, I dismiss the landlord's claim of \$170.00 for re-painting the rental unit as this was not agreed on with the tenant on the signed agreement at the end of the tenancy and no move in or move out condition inspection report has been recorded to indicate that the unit had to be re-painted due to smoke.

The landlords continue to hold the tenants' security and pet damage deposits as they did not receive the tenants forwarding address until January 21, 2010 and they filed their application for Dispute Resolution to keep the security deposit on February 02, 2010.

Sections 23(2)(4), 24(2)(a), 35(3) and 36(2)(a) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s23(2)(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4)(b), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep part of the tenants' security deposit to compensate them for the cleaning costs.

As the landlords have been partial successful with their claim I find they are entitled to recover half the \$50.00 filing fee from the tenant. A Monetary Order has been issued for the following amount:

Cleaning	\$350.00
Total amount owed to the landlord	\$375.00
Security and pet damage deposits	\$1,600.00
Total amount to be returned to the tenant	\$1,225.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. I Order the landlords to keep **\$375.00** from the tenants security deposit. The landlords must return the remainder of the security and pet damage deposit of \$1,225.00 to the tenant within 10 days of receiving this decision.

The remainder of the landlords claim is dismissed with leave to reapply

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: March 26, 2010.

Dispute Resolution Officer