

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order to keep the security deposit. The landlord withdrew her application for a Monetary Order for money owed or compensation for damage or loss and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 15, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on October 20, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The female landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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

Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on April 26, 2007. The tenant and landlords entered into a new tenancy agreement for a one year lease which was due to expire on November 01, 2009. The tenant paid a monthly rent of \$1,625.00 which was due on the 1st of each month. The tenant paid a security deposit of \$500.00 on January 09, 2007.

The landlord testifies that the tenancy ended before the end of the fixed term by mutual agreement. The tenant vacated the rental unit on September 30, 2009. The tenant gave the landlord her forwarding address on September 30, 2009.

The landlord testifies that she wanted the tenant to attend the move out condition inspection but found she had moved out of the area. The landlord states that she gave the tenant opportunity to attend the inspection but she failed to do so and the inspection was completed in her absence with a witness.

The landlord states that the tenant left damages at the rental unit. The landlord has provided photographic evidence, the move in and move out condition inspection reports and receipts for repairs. The damages include a broken kitchen window which was replaced at a cost of \$208.83; deep scratches in the living room floor, unfinished staining of the bedroom floor which the tenant had started and left a large unstained centre section of floor; blue paint splashes over wooden floor. The landlord hired a contractor to sand, stain and re-glaze the floors. The contractor also installed the missing sink vanity and repaired bedroom closets and an outside tap at a total cost of \$1,050.00. Other damages include a hole in the ceiling tiles, damage to bathroom door, broken dishwasher and plug and switch covers missing.

The landlord states she does not seek the total amount of damages they have incurred and only requests to keep the tenants security deposit in partial satisfaction of her claim.

Analysis

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 have applied a test for damage and loss claims:

- 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.

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.

I find the landlord has established a claim for damages to the rental unit. The landlord has submitted sufficient evidence to support her claim with the move in and move out condition inspection reports, photographic evidence and evidence of the invoices for the repair and replacement work. I also find the landlords are not attempting to make a claim for all the damages incurred. Consequently I find the landlords are entitled to keep the tenants security deposit of \$500.00 and accrued interest of \$14.97 in partial satisfaction of the cost incurred to rectify these damages.

As the landlord has expressed that they do not want to pursue any other costs for damages I Order the landlords to keep the security deposit and accrued interest of \$514.97 pursuant to section 38(4)(b) of the Act.

Conclusion

The landlord application is allowed. **I HEREBY ORDER** the landlord to keep the tenants security deposit and accrued interest of **\$514.97**.

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 24, 2010.

Dispute Resolution Officer