

DECISION

Dispute Codes MND, MNSD, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$399.46 and a request to retain the full security deposit plus interest towards this claim

Background and Evidence

Undisputed portion of the claim

The landlord has claimed \$30.00 to repair an excessive number of nail holes left in the walls, and the tenant stated that she does not dispute this portion of the claim.

Disputed portion of the claim

The landlord is also requesting an order allowing her to keep the full security deposit plus interest, because it is her contention that the tenants failed to properly participate in the move-out inspection and have therefore waived the right to the return of the security deposit.

The landlord testified that:

- During the move-out inspection the tenant became increasingly aggressive and impatient and at one point grabbed the move-out inspection sheets from the landlord and started to leave.
- She therefore took the move-out inspection sheets back from the tenant, separated out the tenants copy from the other copies and gave it to the tenant.
- Once the tenant had received his copy of the move-out inspection, he left.
- Since she had not yet completed the move-out inspection, she continued with the inspection in the absence of the tenant.

The applicant therefore believes that since the tenant failed to fully participate in the move-out inspection, and left before it was over, he has waived his right to the return of the security deposit.

The applicant therefore requests an order allowing the landlord to keep the full security deposit plus interest and an order that the respondent bear the \$50.00 cost of the filing fee that was paid for today's hearing.

Analysis

Without even hearing from the respondent it is my finding that the tenants have not waived their right to the return of the security deposit.

When the landlord separated out the tenant's copy of the move-out inspection report and handed it to the tenant, it would be reasonable for a tenant to then assume that the inspection was over and therefore if the tenants left, after receiving his copy of the move-out inspection report, I will not find that the tenant did not participate.

I will therefore not order that the landlord be allowed to keep the full security deposit plus interest.

I will allow the undisputed portion of the claim and I also allow the landlords claim for the filing fee as the tenants did not initially agree to the \$30.00 claim, and therefore the landlord was required to file a claim.

Conclusion

I hereby order that the landlord may retain \$80.00 of the tenant's \$349.46 security deposit plus interest, and I have issued an order for the remaining amount of \$269.46 to be returned to the tenants.

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: April 27, 2010.

Dispute Resolution Officer