

DECISION

Dispute Codes MND, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo 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 \$3875.00

Background and Evidence

The applicant testified that:

- At the end of the tenancy, even though they were given the opportunity to do so, the tenants failed to participate in the move-out inspection.
- The date and time had been set for the move-out inspection however the tenants did not show up.
- Even though the tenants did not participate in the move-out inspection he did an estimate of the repairs needed himself and decided to return \$215.00 of the tenants damage deposit and to keep \$485.00 to cover the cost of the needed repairs.
- The tenants later filed a fabricated claim against him for a large amount of money, which was later dismissed by the Dispute Resolution Officer.
- Prior to the hearing date he returned the remainder of the tenant's security deposit, because he believed he was required to do so.

- Since the tenant filed a fabricated claim against him he is no longer willing to settle for the original amount of \$485.00, he now wants the tenant to pay his full new estimated damages claim of \$2375.00 plus lost rental revenue for one month in the amount of \$1450.00.

The respondent testified that:

- This claim is just a vendetta by the landlord because the landlord was annoyed that she had filed a claim against him.
- How could his original estimate of \$485.00 in damages suddenly jump to \$2375.00.
- She left the rental unit with no damages beyond normal wear and tear and does not believe that any of the landlords claim is justified.
- This claim is totally inflated, as is the claim that it took one full month to get the rental unit ready to re-rent.
- She believes the full claim should be dismissed.
- She does not know whether her son failed to participate on the move-out inspection however he may have.

Analysis

It is my decision that I will not allow the majority of the landlords claim.

The landlord claims that the tenants caused extensive damage to the rental unit and also claims that the amount required to repair the damage is \$2375.00; however the landlord has supplied no independent estimates of either the damage or the cost of repairs, stating that he is a contractor and that is what he estimates the cost will be.

Further I find it suspicious that the landlord was originally willing to accept \$485.00 for the cost of repairs, but now wants \$2375.00 plus a further one month rent. It does appear that this is retaliation for the tenant filing a claim against him, and in fact he

stated that the reason he is now filing this larger claim is because he was upset with the tenant for filing her claim.

That being said it is also my finding that the tenant failed to comply with her obligations under the Residential Tenancy Act when she failed to participate in the move-out inspection. By failing to participate in the move-out inspection the tenant has waived her right to return of the security deposit. Therefore since the landlord thought that he was obligated to return the deposit when in fact he was not I will order that the full amount of the security deposit be paid back to the landlord.

It is also my decision that the respondent must bear the cost of the filing fee paid by the landlord for today's hearing.

Conclusion

I have issued an order for the respondent to pay \$750.00 to the applicants

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 28, 2010.

Dispute Resolution Officer