

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in November 2009 and ended on or about February 28, 2010. The parties further agreed that the tenants paid a \$525.00 security deposit.

The landlord testified that the rental unit was renovated immediately prior to the commencement of the tenancy and that new flooring had been installed at that time. The unit had also been freshly painted at the start of the tenancy. The landlord testified that the tenants caused extreme damage to the flooring in one of the bedrooms of the unit which would cost him \$500.00 to repair. The landlord further testified that the tenants smoked in the rental unit and that the unit had to be repainted in order to rid it of the smell of smoke. The landlord estimated that it would cost him \$350.00 for materials to repaint the unit. The landlord claimed that he submitted photographs of the damaged flooring to the Residential Tenancy Branch the day before the hearing. The landlord did not give a copy of those photographs to the tenant.

The tenant denied that the floors were damaged and further denied having smoked in the rental unit.

### Analysis

The landlord bears the burden of proving his claim on the balance of probabilities. The landlord apparently had photographs which would prove that the floors were damaged, but did not comply with the Rules of Procedure and submit copies of those photographs to the Residential Tenancy Branch at least 5 days before the hearing and did not provide copies to the tenant. I cannot consider the landlord's evidence as the tenant has been deprived of the opportunity to view the evidence on which the landlord seeks to rely. The landlord requested that he be permitted to submit the photographs at a later date. I denied that request as the landlord filed his claim in March and has had nearly 4 months in which to provide the photographs which he claimed were taken at the end of the tenancy. I find that a further delay to permit the landlord to submit evidence which easily could have been submitted within the required timeframe will pose a prejudice to the tenant.

I find that the landlord has not met the burden of proving that the tenant caused damage to the flooring which was beyond what might be characterized as reasonable wear and tear. I was unable to consider the landlord's photographs for the reasons outlined above and the landlord did not provide proof that it would cost \$500.00 to repair the flooring. I further find that the landlord has failed to prove that the tenant caused smoke damage to the rental unit or that it would cost \$350.00 to repaint the unit. Accordingly I dismiss the landlord's claim.

### Conclusion

The landlord's claim is dismissed.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance

of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that there is insufficient evidence to prove that the tenants have extinguished their right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenants the \$525.00 security deposit. I grant the tenants a monetary order under section 67 for \$525.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 07, 2010

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