

## **DECISION**

Dispute Codes      MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in person by the Landlord to the Tenant's wife on approximately April 15, 2010, in accordance with section 89 of the *Act*.

The Tenant appeared and requested that his Agent speak on his behalf.

The Landlord, his Witness, the Tenant and his Agent appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the month to month tenancy began on December 6, 2008 and ended when the Tenant vacated the rental unit on October 27, 2009. Rent was payable in the amount of \$900.00 and a security deposit of \$450.00 was paid on December 3, 2008. The parties attended a previous Dispute Resolution Hearing on March 18, 2010 where the Tenant was awarded a monetary order for the return of double the security deposit plus interest. The Landlord did not complete a move-in inspection report and did not complete a move-out inspection report.

The Landlord's Witness testified and advised that she moved into her daughters unit in the rental building with her husband prior to May 2008. In approximately May 2008 the Witness and her husband became employees of the Landlord and worked as resident caretakers of the building until they moved out in December 2009. The Witness argued that she did not know her exact start date as caretaker; however she knew they worked there for one and a half years. It was during their capacity as resident caretakers that the Witness and her husband renovated the rental unit in question by installing new laminate flooring, new kitchen cabinets and counter tops, new bathroom counter, a new tub surround and sliding doors. I asked the Witness if she had anything further to tell me for which she answered "no". When I went to dismiss the Witness the Landlord requested that I asked the Witness about the fire. The Witness said she remembers the Tenant having a fire which was caused by cooking oil that burnt the counter top and cupboard however she could not provide a date of when this fire occurred. She confirmed that the Tenant moved into the rental unit after her husband and she completed the renovations so the counter top and cupboards were new.

The Landlord testified that he had the counter repaired at a cost of \$787.20. He could not provide a date of when the work was performed and then later stated that the work was performed on January 12, 2010. The Landlord argued he had to pay to have the counter top and sink removed, replace the counter and upper cabinet, and reinstall the sink. The Landlord referred to his photo evidence and stated that these photos were taken on approximately October 28 or 29, 2009.

The Tenant's Agent argued that there was no condition inspection report at the onset or at the end of the tenancy therefore the Landlord could not prove the condition of the rental unit during the tenancy. The Agent stated that the countertop and cabinet had been damaged from the onset of the tenancy and there is no evidence that the alleged damage was caused by the Tenant. The Agent pointed out that the Landlord only made application for dispute resolution after the Tenant was award the monetary order for the return of double the security deposit.

The Tenant testified that the counter looked as it did in the Landlord's photos from the onset of the tenancy and that there was no fire in the rental unit during his tenancy.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord's Witness provided testimony that she assisted with renovating the rental prior to the Tenant taking possession of the unit. The Witness could not provide dates of when the alleged renovation took place nor did the Landlord provide documentary evidence to support that materials were purchased to renovate the unit prior to the tenancy. The Tenant and his Agent provided opposing testimony as to the condition of the rental unit at the onset of the tenancy agreement. The Landlord testified the

removal and reinstallation of the counter, sink, and upper cabinet was completed on January 12, 2010 at a cost of \$787.20 however there is no evidence before me to support that the work was completed in January 2010. The Landlord provided contradictory evidence in the form of a copy of an invoice dated November 1, 2009 for an amount of \$787.20 which lists only counter top removing sink and S installing. Based on the aforementioned, and in the absence of a move-in and move-out inspection reports, I find the Landlord has failed to prove the test for damage or loss, as listed above, and I hereby dismiss his claim.

The Landlord has not been successful with his application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, without 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: August 24, 2010.

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Dispute Resolution Officer