

DECISION

Dispute Codes

MND, FF

Introduction

This was an application by the tenant for a monetary order for damage to the rental unit. The application was verbally amended by the landlord in the hearing to exclude the request to retain the security deposit as this was previously determined by a decision of a Dispute Resolution Officer.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started March 01, 2009 and ended November 15, 2009. At the start of the tenancy the parties did not conduct a move in inspection. At the end of the tenancy the parties conducted a cursory inspection and the landlord gave the tenant a "letter" indicating that all was generally satisfactory, except for some paint chipping on the kitchen cabinet doors and that there was an issue with one of the closets. I do not have benefit of the letter.

The landlord is claiming that the tenant caused damage to the rental unit closets, caused damage to the rental unit by way of some fastening holes in the walls, and

damage to a stone- covered pillar in the unit. The landlord provided photographs of the purported damage and quotes for the work to repair or remediate the purported damage to a total of \$1813.76. The landlord further testified that in addition to not conducting a move in inspection with this tenant, she also did not conduct a move out inspection with the tenants prior to this tenancy.

The tenant testified that she disagreed with the landlord's original assessment of damage at the end of the tenancy, and testified that all the damage the landlord purports to was already present when they moved in and that she did not cause any of the purported damage in her tenancy of six (6) months.

Analysis

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for such items as loss of rent or loss of occupation during the repair, depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that the landlord cannot establish that she caused the damages, and that the damages were there at the outset of her tenancy.

On the face of the evidence, I find the landlord has not met the test for damages and loss. The landlord has not provided evidence to support her claim that the tenant in this matter caused damage to the rental unit. As a result, **I dismiss** the landlord's application in its entirety.

Conclusion

The landlord's claim **is dismissed**, 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*.
