

DECISION

Dispute Codes: *MNSD, MND, MNR, FF, DRI, CNC, CNR*

Introduction

This hearing dealt with applications by both the Landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, cost of cleaning, repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The tenant applied to cancel the notice to end tenancy and to dispute notice of rent increase. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Since the tenancy has ended, the tenant's application to cancel the notice to end tenancy and to dispute the notice of rent is no longer relevant. Therefore, this hearing only dealt with the applications for monetary orders by both parties.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, cost of repairs and the filing fee? Is the landlord entitled to retain the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started on August 01, 2008 for a fixed term of one year. The parties entered into another fixed term agreement on August 01, 2009. At the end of the term, the tenancy would continue on a month to month basis.

The landlord had post dated rent cheques and rent was paid regularly on the first of each month. However, on July 01, despite depositing the cheque, the rent was not credited to the landlord's account. On July 09, 2010, the landlord served the tenant with a ten day notice to end tenancy.

It was later discovered that the bank had made a mistake. Subsequently the cheque was deposited into the landlord's account. On July 28, 2010 the cheque was returned for insufficient funds. By the end of July, the tenant had not paid rent for July and despite making application to cancel the notice to end tenancy, the tenant moved out on July 31, 2010.

Both parties agreed that when the tenant moved into unit, it was brand new. The landlord filed evidence to support this. At the end of the tenancy, the landlord conducted a move out inspection after making an appointment with the tenant. The tenant did not show up. The landlord filed photographs of the unit which show a cracked mirror closet door, a burnt granite counter top and the dirty condition of the unit. The landlord also filed copies of the invoices to support his monetary claim.

The tenant filed photographs to show that the unit was clean, but agreed that the unit did require some additional cleaning. The tenant agreed that he had damaged the mirror and the granite counter top, but argued that it was just routine wear and tear.

The landlord is claiming the following:

1.	Rent for July	\$1,400.00
2.	Repair to mirror of closet door	\$392.00
3.	Replacement of counter top	\$896.00
4.	Cleaning	\$250.00
5.	Filing fee	\$50.00
	Total	\$2,988.00

Analysis

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant agreed that he did not pay rent for July and therefore the landlord is entitled to \$1,400.00.

The tenant agreed that he had caused damage to the mirror of the closet door and is therefore required to pay for the cost of the repair in the amount of \$392.00.

During the hearing the landlord stated that she had not yet replaced the granite counter top and had not incurred any cost to do so. The photographs show that a hot pan caused two circular burn marks. While the damage to the counter top is superficial and does not warrant a replacement of the countertop for it to remain functional, I find that the burn marks have resulted in diminishing the value of the counter top.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. For this reason, I will award the landlord a minimal award of \$100.00.

The landlord did not file any evidence to support her claim of having incurred a cost of \$250.00 for cleaning. The tenant agreed to pay \$100.00. Therefore I will award the landlord \$100.00 towards cleaning.

The landlord has proven the majority of her claim and is therefore entitled to the filing fee. The tenant’s application was not necessary as the tenant moved out according to the effective date of the notice to end tenancy. Therefore, the tenant must bear the cost of filing his application.

Over all, the landlord has established a claim for the following:

1.	Rent for July	\$1,400.00
2.	Repair to mirror of closet door	\$392.00
3.	Replacement of counter top	\$100.00
4.	Cleaning	\$100.00
5.	Filing fee	\$50.00
	Total	\$2,042.00

I order that the landlord retain the security deposit of \$725.00 and accrued interest of \$4.72 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,312.28. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$1,312.28**.

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: September 07, 2010.

Dispute Resolution Officer