



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call this date to deal with the landlord's application for a monetary order for damage to the unit, site or property, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

One of the agents for the landlord gave affirmed evidence. Despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on May 5, 2010, the tenant did not attend the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on March 1, 2002 and ended on October 31, 2009 after the tenant had provided to the landlord notice to vacate the unit. Rent in the amount of \$745.00 was payable in advance on the 1st day of each month and there are no rental arrears. On February 21, 2002 the landlord collected a security deposit from the tenant in the amount of \$350.00.

A move-in condition inspection report was completed on February 22, 2002, a copy of which was provided in advance of the hearing, and has a signature of the landlord and

the tenant. That same form was used for the move-out condition inspection report, and it shows a number of issues that the landlord's agent testified were beyond normal wear and tear in the apartment unit. Also provided in advance of the hearing is a Security Deposit Return Form, dated October 31, 2009 signed by the tenant and an agent for the landlord wherein the tenant agreed that deductions from the security deposit were consented to in the amount of \$1,323.75. The landlord's agent, however, testified that the total amount claimed against the tenant for damages is \$1,163.75. The landlord also provided evidence with respect to the following:

- at the end of the tenancy the entire unit required painting at a cost of \$1,050.00, for which a copy of an invoice was provided in advance of the hearing, and the landlord is claiming only the "extra" charge on the invoice for repairing a hole in the wall and paint sealing to cover crayon markings in the total amount of \$230.00;
- the carpet was new when the tenant moved in, and had to be replaced after the tenant vacated for which the landlord is claiming a pro-rated amount of \$419.25;
- two bi-fold doors and 2 interior doors were broken, for which the landlord is claiming \$420.00 and provided a copy of an invoice to substantiate that claim;
- prior to moving out of the unit, the tenant had asked for garbage removal from the landlord for which the tenant signed a Notification of Maintenance Chargeback for \$94.50 on October 19, 2009 which has still not been paid by the tenant. A copy of that notification was provided by the landlord in advance of the hearing;
- photographs of the damages were also provided in advance of the hearing;

Analysis

In a claim for damages, the onus is on the claiming party to establish the following:

- that the damage or loss exists;
- that the damage or loss exists as a result of the other party's breach of the *Act* or tenancy agreement;

- the amount of the damage or loss; and
- what efforts the claiming party has made to mitigate, or reduce the cost of the damage or loss.

I find that the landlord has established all 4 elements in the claim before me. I also find that the landlord obtained the written consent of the tenant to retain the security deposit in partial satisfaction of the claim.

Conclusion

For the reasons set out above, I find that the landlord has established a claim for \$1,163.75 in damages. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$362.39 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$851.36. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 13, 2010.

Dispute Resolution Officer