

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The parties and their witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

This tenancy began on April 15, 2010, and ended at some point in August 2010, when the Tenant vacated the rental unit. The monthly rent of \$900.00 was payable on the first day of the month and a security deposit of \$450.00 was paid on April 14, 2010.

The Landlord gave undisputed testimony that she issued a 10 Day Notice to End Tenancy during the first part of August, with an amount listed of \$900.00 and that the rent for August remains unpaid. I note the Notice was not supplied into evidence.

The Landlord supplied photographic evidence and gave affirmed testimony that the Tenant did extensive damage to the rental unit during the tenancy, for which she is seeking a monetary order for loss or damage under the Act. The Landlord is claiming the following:

Window replacement	200.00
Stains on carpet	300.00
Junk removal	200.00
Kitchen and Bath cleaning	200.00
Curtain spill stain	100.00
Drywall damage	250.00
Fireplace damage	260.00
Unpaid rent for August	900.00

Total	2,410.00
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The photographic evidence showed a broken window, extensive drywall damage, broken fireplace tiles, blood stained curtains, debris and garbage remaining in and around the rental unit, stained carpet, walls and floors, old food left in the refrigerator, and dirty and stained bathroom, tub and toilet.

The Landlord testified that at some point in August, she noticed a window in the rental unit broken and called the police. The police attended and discovered a friend or roommate of the Tenant was in the rental unit, who had come in and damaged the window and rental unit.

The Landlord testified that the Tenant said he would move out on August 16, 2010 and said he would come back and clean the rental unit, but did not.

The Landlord stated that the damages were too extensive to be able to complete them and as of the day of the hearing, the repairs were not complete.

Upon query, the Landlord confirmed that she has not supplied proof, such as receipts or invoices to prove the specific amount for each element of the damage, but rather the figures provided were estimates. I further note there was no move in or move out condition inspection report submitted into evidence.

The Landlord's witness testified that the damage to the window and wall was done by the Tenant's roommate, not a breaking and entering, that the water damage was from the air conditioner the Tenant installed and that the tiles were admittedly loose, but that the Tenant assured the Landlord his father would fix the tiles.

The Tenant testified that he was on time on August 16, for the move out, and he and the Landlord inspected the rental unit. The Tenant stated that during the inspection the broken fireplace tiles were mentioned, but not listed on the inspection report, and he further stated that the tiles were loose at the beginning of the tenancy and never fixed.

The Tenant testified that the damages from the broken window, the wall and blood damage was as a result of a breaking and entering, not caused by him or his guests.

The Tenant testified that he did not cause the water damage and that he was not allowed to clean the rental unit because the Landlord's son informed him that the police told him not to return. The Tenant further testified that there was a move in and move out inspection, but that he never received a copy of the written report.

The Tenant's witness BT stated that all the fireplace tiles were lifted when the Tenant moved in, but were never repaired.

The Tenant's witness RT confirmed that the tiles were thin and lifted when the Tenant moved in and further stated that a soft spot in the floor by the washer caused the water damage.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Section 35 of the Act requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy. I accept the undisputed testimony that there was a move in and move out inspection, but there is no evidence before me of the report, therefore I find that the right of the Landlord to claim against the deposit for damages is extinguished. However the Landlord is still entitled to claim for damages allegedly caused by the Tenants.

When making a claim for damages under a tenancy agreement or the Act, the party (in this case, the Landlord) making the allegations, has the burden of proving their claim.

Proving a claim in damages requires:

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.

In weighing the evidence, I prefer the evidence and testimony of the Landlord over that of the Tenant, as I find the Tenant's testimony lacked credibility. I find the Landlord provided photographic evidence and I accept that the Tenant damaged the rental unit.

Residential Tenancy Branch policy suggests that, unless the landlord has provided explicit permission, that at the end of a tenancy a tenant must restore any decor to its original condition. Section 37(2) of the Act requires a tenant to leave a rental unit in a reasonably clean and undamaged condition.

I find that the Landlord has established that the Tenant damaged the rental unit to a large extent through the testimony and photos, but has not supplied verification of a specific amount of damages with receipts or invoices and has not repaired the damage. Therefore I find that the Landlord has not met the third and fourth part of the burden of proving damages.

Residential Tenancy Branch policy suggests that a dispute resolution officer may, however, award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been

proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the Landlord.

In this case, I find the Landlord is entitled to an award of nominal damages for each of the elements of her claim. I find that the Landlord was quite reasonable in her cost estimation in relation to the photographic evidence depicting the state of the rental unit and should be compensated in the following nominal amounts:

	Claimed	Accepted
Window replacement	200.00	100.00
Stains on carpet	300.00	100.00
Junk removal	200.00	100.00
Kitchen and Bath cleaning	200.00	100.00
Curtain spill stain	100.00	25.00
Drywall damage	250.00	200.00
Fireplace damage	260.00	130.00
Unpaid rent for August	900.00	900.00
Filing fee	50.00	50.00
Total	2,460.00	1,705.00

In the absence of evidence to the contrary, I find that the Landlord is entitled to compensation as indicated in the table.

I order that the Landlord retain the security deposit of **\$450.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,255.00**.

Conclusion

The Landlord may keep the security deposit in partial satisfaction of the claim and is granted an order for the balance

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: November 10, 2010.

Dispute Resolution Officer