



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: MND, MNSD, FF
Tenant: MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications filed by the landlord and the tenant. The landlord has applied 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. The tenant has applied for return of double the amount of the security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The parties both attended the conference call hearing and gave affirmed testimony. All information provided has been reviewed and is considered in this Decision.

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?

Is the tenant entitled to return of the security deposit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began in July of 1997, and ended on June 26, 2010 when the landlord had requested the tenant to move out for the landlord's use of the property.

Rent in the amount of \$650.00 was payable at the beginning of the tenancy, and was \$810.00 by the end of the tenancy, and there are no rental arrears. No move-in condition inspection report was completed, and no move-out condition inspection report was completed.

The parties gave conflicting testimony about the amount of the security deposit that was paid at the outset of the tenancy, although both parties agree a security deposit was paid.

The landlord testified that the tenant left the unit with the keys and a note in the mailbox which contained an address for the tenant, however he further testified that it was not really the tenant's address.

The landlord claims \$400.00 for a broken gate caused by the tenant, as well as \$400.00 for drilling holes in the kitchen cabinets, \$300.00 for a screen on the storm door that was left full of holes and the closer is also missing, \$400.00 for cleaning the unit, \$400.00 for wall damage, and \$70.00 for a missing broken fridge. The landlord testified that he was in Mexico when the fridge stopped working and he told the tenant to get another one and keep the old one so that he could receive \$70.00 from BC Hydro after proving that the new one was an energy efficient fridge. The landlord provided no evidence of any of the damages claimed, other than verbal testimony.

The tenant testified that he thought he had paid a full month's rent for the security deposit but really doesn't remember; it was 13 years ago. He gave the landlord his forwarding address in writing on June 26, 2010 and the landlord has not returned any of the security deposit to him.

Analysis

I find that the landlord has failed to provide proof of the condition of the rental unit at the time the tenant moved in and has failed to provide any evidence of the condition when the tenant moved out. Further, the *Residential Tenancy Act* stipulates that if the landlord fails to give the tenant at least 2 opportunities to conduct a move-out condition

inspection report, the landlord's right to claim against the security deposit for damages is extinguished.

Further, in order to be successful in a claim for damages, the onus is on the claiming party to prove that:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount or cost of the damage or loss;
4. What steps the claiming party made to mitigate, or reduce the damage or loss suffered.

I find that the landlord failed to prove any of the elements listed above. No receipts, or photographs or condition inspections have been provided.

With respect to the tenant's application for recovery of the security deposit, I find that the tenant can only be successful if the tenant is able to provide the amount paid to the landlord. The tenant was not able to provide that information.

Conclusion

For the reasons set out above, both applications are hereby 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*.

Dated: December 02, 2010.

Dispute Resolution Officer