



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution for an order for monetary compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

All parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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

Is the Landlord entitled to the monetary compensation sought?

Background

The parties agree there is no written tenancy agreement. The parties do not agree on the move out date, with the Landlord stating the date was July 31, 2010, and the Tenant stating the move out date was August 15, 2010. I heard testimony that this tenancy started on or about the March 12, 2007, on a month to month basis. The undisputed testimony indicated that the monthly rent was \$2,700.00 and a security deposit of \$2,700.00 was paid on March 12, 2007. The Landlord stated there was a written move in and move out condition inspection report and the Tenant's Agent stated that there was not a written condition inspection report. A condition inspection report was not submitted into evidence. I heard undisputed testimony that the move out inspection was on August 16 and that the security deposit has not been returned to the Tenant.

The Landlord's relevant evidence included a breakdown of costs to repair the damage and loss to the rental unit, some receipts associated with the costs and photos of the rental unit. I note that a review of the receipts reveal inconsistencies with the amount claimed and the amount listed on the receipt.

The costs associated with the Tenant's claim are as follows:

Description	Amount
Microwave plate estimate	50.00
Replacing fridge water filter	50.34
Broken parts on overhead fan	305.67
Cleaning house	320.00
2 broken handles	10.08
Junk removal	46.00
Repairing holes in kitchen cabinets/pillars	90.00
Labour for replacing baseboards	450.00
Baseboard trim	102.58
Missing window screen	75.00
Fabricate missing lamp bracket	67.20
Repair broken outlets	194.12
Replace damaged cork tile	250.00
Filling in holes	90.00
Back door repair	120.00
Application fee	50.00
Replace ripped lino	140.00
Unclog line/new bag	73.86
Yard work	160.00
Total	\$2,703.07

In support of his claim, I heard testimony from the Landlord that there was a move in inspection and a move out inspection and a report was completed, but that his copy had gone missing.

The Landlord testified that the damage left by the Tenant was beyond normal wear and tear and that not everything was evident at the initial walk through move in inspection.

The Tenant's Agent did not acknowledge any damage, but stated that if there was any damage, it would be normal wear and tear after a tenancy in excess of three years. The

Tenant's Agent stated there was no written move out inspection, no copy of the same and that the Tenant had not agreed to any damages at the move out inspection.

The Tenant's Agent denied damaging the yard, that it was actually improved by the occupants, that there was no screen door at the start of the tenancy, that they improved the condition of the rental unit, that there were no baseboards when they moved in, that junk removal was unnecessary and that they had a cleaning crew clean the rental unit after moving out.

Analysis

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

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that without proof of a move in or move out inspection or condition inspection report, most of the evidence consisted of disputed, verbal, testimony. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

Section 23 and 35 of the *Act* requires a landlord to complete an inspection report in accordance with the Act and regulation. There is no evidence before me the Landlord completed a condition inspection report in accordance with the Act and regulation. By operation of Section 24 and 36 of the Act the Landlord's right to claim against the security deposit is extinguished.

Without the evidence of a condition inspection report, I find the Landlord had insufficient evidence to establish the condition of the rental unit either before or after this tenancy. Therefore I find that the Landlord has not met his burden of proving a monetary claim against the Tenant for the alleged damages to the rental unit, I do not award the Landlord the filing fee and I **dismiss** his claim without leave to reapply.

I further **direct** that the Landlord return to the Tenant the security deposit and interest of

\$2,773.72 within one week of this Decision. I **grant** the Tenant an order under section 67 for the amount of **\$2,773.72**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed and he is directed to return to the Tenant the security deposit and interest of **\$2,773.72** within one week of this Decision.

The Tenant is granted a monetary order for **\$2,773.72**.

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 20, 2010.

Dispute Resolution Officer