



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: *MND, MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the cost of repairs, cleaning of the rental unit and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to repair and clean the rental unit and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on February 01, 2010 and ended on August 30, 2010. The rent was \$1,500.00 due in advance on the first day of each month. The tenant paid a security deposit in the amount of \$700.00.

The landlord stated that she was away on vacation at the time the tenancy ended. She returned on September 03 and conducted a move out inspection on her own. When the tenant contacted her for the return of the security deposit, she advised him that the cheque was in the mail. The tenant stated that the landlord did not inform him of any deductions that she intended to make.

Upon receipt of the cheque the tenant found that the landlord had deducted \$470.00 off his deposit for cleaning and to replace the handle on the stove.

The landlord filed photographs of the insides of the stove and dishwasher and the tiles on the bathroom wall. The tenant agreed that he had failed to clean the insides of these appliances, but would have done so if the landlord had given him the opportunity to attend a move out inspection. The landlord agreed that she did not contact the tenant to attend a move out inspection and did not have the consent of the tenant to make a deduction off the security deposit.

The landlord stated that the handle of the oven was broken. The tenant stated that it just came apart at the joint when he tried to open the oven door. He also stated that he informed the landlord about the handle prior to her leaving on vacation. The landlord stated that she assumed that the handle could be reattached to the door, but upon taking a closer look during the move out inspection, she found that it had to be replaced.

The landlord is claiming the following:

1.	Cleaning for 5 hours at \$20 per hour	\$100.00
2.	Shampoo carpets	\$80.00
3.	Repair oven door	\$235.00
4.	Replace light bulbs	\$15.00
	Total	\$430.00

Analysis

The tenant agreed to pay for the shampooing of the carpet and for the light bulbs.

The tenant agreed that he left the insides of the appliances as per the photographs filed by the landlord, but disputed the amount of the landlord's claim. Since the tenant did leave the appliances and the bathroom tiles in the condition that the landlord claims he did, I will award the landlord two hours of cleaning in the amount of \$40.00.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In the case of the landlord's claim for the cost of replacing the oven handle, I find that the landlord has not proven that the damage was caused by neglect on the part of the tenant. The landlord did not take action to fix the handle when first reported to her by the tenant. Therefore I find that the landlord's claim for the cost of replacing the stove handle has not met all the components of the above test and accordingly, I dismiss the landlord's claim for \$235.00.

Overall, the landlord has established a claim of \$135.00. The landlord has proven a portion of her case and therefore is entitled to a portion of the filing fee. I award the landlord \$25.00 towards the filing fee.

The landlord has already returned \$230.00 to the tenant and has established a claim of \$160.00. Therefore I order the landlord to return to the tenant the balance of the security deposit in the amount of \$310.00, within 15 days of receiving this decision.

Conclusion

The tenant is entitled to the balanced of his security deposit in the amount of \$310.00. I order the landlord to return this amount to the tenant within 15 days of receipt of this decision.

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: January 25, 2011.

Residential Tenancy Branch