



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 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 for reimbursement of the filing fee.

The Landlord's Agent and the Tenant 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.

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 September 1, 1995, and ended on July 1, 2010. A security deposit in the amount of \$500.00 was paid on August 1, 1995.

At the outset of the hearing, the Landlord's Agent testified that she had no personal knowledge of the condition of the rental unit, the claimed for damages or the invoices supplied into evidence as she was on leave during the time of the tenancy's end and inspection. The Landlord's Agent testified that the Landlord's representative attending to the matter of this dispute would not be in attendance due to a busy schedule and impending retirement. The Landlord additionally supplied a move out inspection report, Security Deposit Refund work-up sheet, communications between the Landlord and Tenant and a tenancy agreement.

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

Description	Amount
Blind Cleaning	\$261.50
Furniture Removal	270.00
Door replacement	560.00
Cleaning	300.00
Filing fee	50.00
Total	\$1,411.50

The Landlord also claims to retain the security deposit and interest.

In support of their claim, I heard testimony from the Landlord's Agent that there was no move in inspection at the start of the tenancy as there was no requirement for the same at the time. The Landlord's Agent could not supply testimony as to why the charges were incurred and could not explain the discrepancy in the Landlord's Security Deposit statement between alleged damages and invoiced damages.

The Landlord's Agent, upon query, stated that the Landlord knew of the Tenant's forwarding address as of the day the tenancy ended on July 1, 2010.

The Landlord did not supply evidence of any maintenance during the fifteen year tenancy.

The Tenant gave affirmed testimony, admitting that she damaged the bedroom door because she had to move a recliner in due to health problems, but denied that she did damaged the rental unit or left it unclean. The Tenant testified that she wanted to retrieve her belongings, but that the Landlord was non-cooperative in allowing her to do so.

Analysis

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

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.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

While the Landlord had some evidence that the rental unit had to be cleaned, the evidence did not breakdown what required cleaning in the unit, nor to the extent. Further, the evidence of blind cleaning did not specify which blinds needed cleaning nor to what extent.

The Tenant is allowed reasonable wear and tear in a rental unit and after a fifteen year tenancy, I would expect the Landlord to provide some measure of cleaning and maintenance of a rental unit prior to re-renting. I find the Landlord's evidence insufficient and I find the Tenant's testimony that she cleaned the rental unit and blinds to be credible. I therefore find the Tenant left the rental unit in a reasonable state of cleanliness as required and I **dismiss** the Landlord's claim for cleaning and blind cleaning in the amount of **\$561.50**.

The Tenant testified that she tried to obtain her belongings and was unable to do so. In the absence of any testimony in support of this claim or explanation of what items were removed as per the invoice, I **dismiss** the Landlord's claim for furniture removal of **\$270.00**.

The Tenant admitted damaging the bedroom door to move in a recliner and the Landlord's evidence listed the replacement for this item to be \$260.00. However, the Landlord's Agent stated that the door was 15 years old, and under RTB guidelines, the useful life of a door is 20 years. I find the door has been depreciated by 75% and I **allow** the Landlord's claim in the amount of **\$65.00**.

I **allow** the Landlord **\$15.00** for the return of the filing fee for the Application which reflects the partial success achieved, and find the Landlord has established a total monetary claim of **\$80.00**, subject to the set off described below.

As the Landlord did not comply with section 38 of the Act, which here required the claim to be filed within 15 days from the end of the tenancy, section 38(6) requires the Landlord to repay the Tenant double the security deposit held, plus the applicable

interest. I find the security deposit due to the Tenant is **\$1,091.49**, comprised of double the \$500.00, plus \$91.49 in interest.

Pursuant to section 72(2) of the Act, I allow the Landlord to retain \$80.00 from the \$1,091.49, and must return the balance of **\$1,011.49** to the Tenant. Pursuant to the policy guideline, I have provided the Tenant with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is entitled to withhold the amount of \$80.00 from the security deposit and interest and is directed to reimburse the tenant the remaining amount of \$1,011.49.

The Tenant is granted a monetary order for \$1,011.49.

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 17, 2011.

Residential Tenancy Branch