

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This is an application by the Landlord for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit and the recovery of the filing fee. Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

This tenancy began on January 1, 2010 on a month to month basis and ended sometime between September 1, 2010 and September 3, 2010. The signed tenancy agreement shows a monthly rent of \$945.00 payable on the 1st of each month. A security deposit of \$472.50 was paid at the beginning of the tenancy.

The hearing documents were served by registered mail on September 16, 2010 and both parties agree that both received the others evidence packages.

The Landlord states on direct evidence that the Tenant engaged in wilful damage of the rental unit. The Landlord's photographic evidence depict severe scratching to the face of the stove, 2 large holes in the drywall, a picture of what looks like a dismantled/damaged intercom telephone, a photograph with broken glass on the floor, a photograph of the floor showing what appears to be damage and a photograph of the ceiling showing what appears to be damage to the plaster. The Landlord claims that the refrigerator had to be replaced for \$450.00, the stove for \$170.00, repair to the drywall for \$245.00, repair to the ceiling for \$250.00, repair of the intercom for \$37.50, dump fees for the replaced appliances of \$75.00 and the cleaning of the suite for \$90.00. The total amount being claimed by the Landlord equals to \$1,317.50. This amount exceeds the \$1,287.50 applied for claim by \$30.00. The Landlord has not provided any supporting evidence in documentary or on direct evidence receipts, invoices or estimates for any of the costs being claimed. The Landlord claims that the rental unit was fully cleaned and freshly painted at the beginning of the tenancy. The Landlord has

stated that they did not complete a condition inspection report for the move-in and that a move-out report was not completed as well.

The Tenant disputes the Landlord's claim that the damage was caused by the Tenant. On evidence filed and on direct evidence the Tenant claims that all of the damage reported by the Landlord was present upon his viewing of the rental unit prior to occupancy. The Tenant claims that the Landlord promised to have the repair of holes in the drywall, repair of the intercom and the cleaning of the rental unit prior to the beginning of the tenancy. Upon the Tenant's move-in on January 4, 2010, none of the deficiencies were completed. The Tenant claims that the Landlord has ignored several notifications of the repairs as promised prior to the beginning of the tenancy.

Analysis

I find that the Landlord has failed to establish a claim for damage to the rental unit. The Landlord has not provided any supporting evidence other than direct evidence during the hearing. The Tenant disputes the allegations of the Landlord with direct evidence. I find that in the absence of any supporting evidence that the Landlord has failed to establish his claim and as such dismiss this application for a monetary order for damage to the rental unit. Also, in failing to establish a claim for damages, the Landlord's claim to keep all or part of the security deposit is dismissed. Having been unsuccessful in his application the Landlord must bear the burden of the filing fee.

Conclusion

The Landlord's application is dismissed.

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 21, 2011.

Residential Tenancy Branch