



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD

Introduction

This hearing dealt with cross applications. The landlord is seeking an order to retain the security deposit and a monetary order for compensation for damage to the unit. The tenant is seeking an order to have their security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy began on or about September 1, 2006. Rent in the amount of \$800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00. The tenancy ended February 1, 2011. Both parties agree that no condition inspection was done upon move in or move out. The tenant testified to the following; that the unit was in need of repairs when he first moved in, the present landlord purchased the property four months later, he asked numerous times to have some repairs done however only the bathroom fan was replaced. The landlord testified to the following; she walked through the unit when she purchased the property and felt that it was in satisfactory condition. The tenant adamantly disputes the landlord's submission as to the condition of the unit.

Analysis

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I accept the tenant's testimony. The landlord was unable to satisfy me of their claim, specifically of what the condition was of the rental unit when they first purchased the home.

As for the monetary order, I find that the tenant has established their claim and are entitled to their \$400.00 security deposit and the \$12.79 in interest which has accrued to the date of this judgment

The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$462.79. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$462.79

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: April 19, 2011.

Residential Tenancy Branch