



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Landlord, seeking an order to keep the security deposit and a monetary order for compensation under the Act or tenancy agreement.

Both 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.

I note that the Landlord named a Respondent who was unknown to the Tenant or the Advocate for the Tenant at the hearing. The Landlord could not explain who this person was either, and therefore, I have amended the style of cause to delete this unknown person.

I also note that the security deposit was awarded to the Tenant in an earlier hearing, and therefore, that portion of the Landlord's claim is dismissed without leave.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The Landlord is claiming \$220.64 for cleaning one bedroom and approximately \$4,280.00 for cleaning and painting the rental unit.

The Landlord claims the Tenant smoked in the rental unit contrary to the tenancy agreement. The Landlord did not supply a copy of the tenancy agreement in evidence.

The Landlord did not perform incoming or outgoing condition inspection reports.

The Landlord provided an invoice which simply sets out the repairs as \$3,800.00 for painting the house, \$299.00 for plumbing, and \$180.00 for repairing the wall. There is no breakdown for materials or for labour.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord's Application must be dismissed, without leave to reapply.

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. Here the Landlord had the burden of proof.

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 the Landlord had insufficient evidence to prove the damage or loss occurred as a result of breaches of the Act or tenancy agreement by the Tenant.

There was no condition inspection report performed at the beginning of the tenancy to establish the initial condition of the rental unit. Likewise, without a copy of the tenancy agreement in evidence the Landlord could not establish it was agreed by both parties that the rental unit was non-smoking.

Having found the Landlord had insufficient evidence to prove the claims, I dismiss the Application without leave to reapply.

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 26, 2011.

Residential Tenancy Branch