



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage to the rental unit, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on June 10, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to keep all or part of the tenant's security deposit?

Background and Evidence

The landlords' agent testifies that this tenancy started on June 01, 2010. This was a fixed term tenancy which was due to expire on May 31, 2011 and the tenants moved from the rental unit on June 02, 2011. Rent for this unit was \$1,900.00 per month and the tenants paid a security deposit of \$950.00 on May 01, 2010. A move in and a move out condition inspection was carried out with the tenants and the tenants gave the landlord their forwarding address in writing on June 02, 2011.

The landlords' agent testifies that the tenants signed a tenancy agreement on April 27, 2010. Part of this agreement was an addendum which stated the tenant would be responsible for any damages to the wooden flooring. The landlords' agent testifies at the move out inspection it was noted that there was some damage to a small area of the flooring which was a circle of approximately one foot of staining on the floor. The landlords' agent believes the tenant placed a plant pot in this area. The landlords' agent states the tenants did not agree that they should be held responsible for this damage and did not agree the landlord could keep part of their security deposit to cover the repair.

The landlords agent testifies this section of the flooring had to be removed and replaced at a cost of \$728.00 including HST and has provided a bill showing this cost. The landlords' agent has also provided a copy of the move in and out inspection reports which detail this damage.

The landlord seeks an Order to keep the tenants security deposit in satisfaction of this claim and the remainder of the deposit of \$172.00 will be returned to the tenants.

The landlord also seeks to recover his \$50.00 filing fee from the tenants.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me of his agent. When considering a claim for damage I apply a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support their claim and they are able to meet all of the components of the above test. Therefore, I find that the landlords' application is upheld and they are entitled to a monetary award of \$728.00.

I therefore find the landlord may deduct the amount of \$728.00 from the tenants security deposit pursuant to s. 38 (4)(b) of the Act.

Conclusion

As the landlord has been successful with his claim I find he is entitled to recover the \$50.00 filing fee from the tenants pursuant to s. 72(1) of the Act and may deduct this sum from the tenant's security deposit. The balance of the security deposit of \$172.00 must be returned to the tenants within 10 days of receiving 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: September 12, 2011.

Residential Tenancy Branch