



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for Damage to the unit - Section 67;;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 8, 2010. Rent in the mount of \$750.00 was payable monthly. A security deposit of \$375.00 was collected by the Landlord at the beginning of the tenancy. The Tenant shared the unit, including the kitchen, with the Landlord who also owned the unit until the end of December 2011, following which the Landlord rented the unit to a third party who then shared the unit with the Tenant until July 31, 2011. The Landlord claims that the Tenant left the unit unclean and damaged. The Tenant states that he was not given any choice about the third party sharing the unit and that the unit was cleaned and undamaged at move-out.

Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Given the undisputed evidence that the Landlord owned the unit and shared the unit, including the kitchen, with the Tenant for a substantial part of the tenancy, I find that the Act does not apply to the living arrangement between the Parties. As such, I dismiss the application of the Landlord.

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: November 09, 2011.

Residential Tenancy Branch