

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, site or property, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking a monetary order for the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

As both parties have attended the hearing and have made detailed reference to the other party's evidence, I am satisfied that each has been properly served with the notice of hearing packages.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

### Background and Evidence

Both parties agreed that this tenancy began on September 1, 2009 as opposed to the partially submitted tenancy agreement which shows September 1, 2010. The Landlord clarified at the beginning of the hearing that the current Tenancy was a new Tenancy agreement entered into by both parties. Both parties agreed that the current tenancy was a fixed term tenancy ending on August 31, 2011 and ended on that date. The monthly rent was \$1,250.00 payable on the 1<sup>st</sup> of each month. Both parties agreed that a security deposit of \$600.00 was paid on July 14, 2009 as shown in the Landlord's submitted documentary evidence which was signed by both parties. Both parties agreed that no condition inspection report was completed for the move-in or move-out. The Landlord claims that the Tenant was the first occupant in a new rental unit as the Landlord took possession of the rental unit on June 18, 2009 as shown by the submitted "possession certificate" approximately 2 ½ months later.

The Tenant has made a claim to have the \$600.00 security deposit returned from the Landlord.

The Landlord is seeking to claim \$57.77 for the cost of paint for repainting the marked walls. The Landlord relies on photographs submitted. The Landlord states that the Tenant attempted to patch paint the walls, but was unsuccessful as he used the wrong color of paint and the discoloration shows. The Tenant disputes this stating that the marks/scuffs are the result of normal wear and tear.

The Landlord is seeking the cost of \$80.00 for carpet cleaning and relies on the receipt from Speedy Carpet cleaners. The Tenant does not dispute this claim.

The Landlord is seeking \$929.60 for the replacement of granite counter tops. The Landlord has submitted an estimate for this cost and has not replaced the counter. The Tenant disputes this stating that no condition inspection reports for the move-in or move-out were done. The Landlord states that the counters tops were new as shown in the "possession certificate". The Landlord further states that the Tenant has been the only occupant. The Landlord has submitted photographs for the counter stains.

The Landlord is seeking compensation of \$207.20 for a stove repair. The Landlord has submitted a receipt of repair from New Tech Appliance for the replacement cost and labour for a new "touchpad" control. The Landlord states that his limited understanding of the repair was that oil had seeped underneath the touchpad requiring replacement. The Tenant states that he informed the Landlord's mother of the problem prior to the end of tenancy, but that nothing was done. The Landlord states that the appliances were new when the Tenant moved in and was the sole user over the two year period.

The Landlord is seeking recovery of a \$75.00 charge for a plumber to repair the "garbage disposal unit". The Tenant dispute this stating that he reported the problem to the Landlord prior to the end of the Tenancy and that the Landlord made attempts at fixing the problem themselves. The Landlord states that a plumber attended and "reset" the disposal unit with an allen key. No replacement of parts was necessary.

The Landlord is seeking \$220.00 for the loss of rental income for 5 days because of the repairs required before he could re-rent the unit. The Tenant disputes this questioning what the 5 days of loss were for. The Landlord states 24-48 hours was required for painting and 24 hours for carpet cleaning. The Tenant agreed with the Landlord that there was damage, but that most of it was the result of normal wear and tear.

### Analysis

I note that in the Landlord's monetary claim of \$2,100.97 there was a discrepancy as the particulars disclosed during the hearing, the Landlord only gave costs totalling, \$1,569.57.

I accept the Landlord's undisputed testimony for his claim of \$57.77 for the cost of the paint. The Tenant disputes that the marks/scuffs are the result of normal wear and tear but does not disputes the discoloration of the patch painting that was done. I find that the Landlord has established a claim for \$57.77 for the cost of paint.

As the Tenant is not disputing the Landlord's claim of \$80.00 for carpet cleaning, I find that the Landlord has established a claim for this amount.

I am satisfied that the Landlord has established a claim for the stained counter tops, but find that the Landlord is pre-mature in his application as no loss has yet occurred. The Landlord has submitted an estimate and has not replaced the counters. I find that until this is done the Landlord does not have a true accounting of the loss. As such, I dismiss this portion Landlord's claim with leave to reapply until such time as there is an actual loss.

I find on a balance of probabilities that the Landlord has established a claim for the replacement of the touchpad on a two year old stove. The Landlord is entitled to recovery of the \$207.20 repair cost.

I find that the Landlord's claim for the "garbage disposal unit" has not been established. Although the Landlord had a plumber attend he did not replace anything. The Landlord clarified that the unit was "reset" with an allen key. I find that this would fall under normal wear and tear and as such find that it would have been part of regular maintenance. The Landlord has not provided any evidence that the "repair" was a result of any negligence by the Tenant. As such, I dismiss this portion of the Landlord's claim.

I find that the Landlord has established a claim for lost rental income. However, I find that the Landlord has failed to establish a claim for the \$220.00 being claimed. The Landlord has submitted no evidence to support the claim for this loss. Based upon the direct testimony of both parties, I find that a loss of rental income occurred, but that as the Landlord has not provided any evidence to support the claim, I award a nominal amount of \$80.00 for the loss of two days. This amount is based upon the monthly rent of \$1,200.00 pro-rated for the 30 days to equal \$40.00 per day.

The Landlord has established a total monetary claim of \$424.97. This consists of \$57.77 for paint, \$80.00 for carpet cleaning, \$207.20 for the replacement of the stove touchpad and the loss of 2 days of rental income of \$80.00. I order that the Landlord retain the \$424.97 from the \$600.00 security deposit currently held in trust. The Tenant is granted a monetary order for the difference of \$175.03. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord may retain \$424.97 from the security deposit.  
The Tenant is granted a monetary order for \$175.03.

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: December 22, 2011.

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Residential Tenancy Branch