

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent, for damage to the unit, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has acknowledged receiving the Landlord's evidence package. The Tenant did not file any evidence. As both parties have attended the hearing and have made detailed reference to the submitted evidence, I find that each party has been properly served with the notice of hearing and evidence under the Act.

The Tenant, R.S. stated during the hearing that the Landlord provided the wrong name for his spouse. The Tenant provided the proper spelling and the application and any possible subsequent documents will reflect the proper spelling. The Landlord does not dispute this.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent and damages to the unit?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties agreed that the Tenancy ended on October 9, 2011. The Landlord states that he re-rented the unit on November 1, 2011. A security deposit of \$437.00 was paid. No condition inspection reports for the move-in or the move-out were completed.

The Landlord states that the Tenant failed to pay rent for October 2011. The Tenant confirms this in his direct testimony. The Tenant states that there were many issues with the Tenancy and gave notice to vacate the rental unit on September 28, 2011 to move out on October 31, 2011.

The Landlord seeks recovery of \$770.00 for unpaid rent for the month of October 2011. The Landlord has provided a copy of a 10 day notice to end tenancy for unpaid rent dated October 2, 2011 that rent of \$770.00 was due by October 1, 2011.

The Landlord also seeks to recover \$200.00 for the repair and painting of the rental unit walls. The Tenant disputes this. The Landlord has provided photographs of the rental unit where there are holes in the walls from what appears to be from shelving. The Tenant confirms that holes in the walls were left from removed shelving which he did not fix before the end of tenancy.

The Landlord is also seeking to recover \$80.00 from the cleaning of the rental unit. The Tenant disputes this stating that the rental was left spotless.

Analysis

The onus or burden of proof is on the party making the claim and in this case the Landlord is responsible as they have made the application. 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.

Based upon the Tenant's own direct testimony the Landlord has established a claim for unpaid rent of \$770.00. The Tenant admitted to not paying October rent. The Landlord has failed to establish a claim for the \$200.00 repair and painting of the walls and the \$80.00 cleaning costs. These claims are in dispute and I find that the Landlord has failed to provide any supporting evidence that these costs were incurred or that the Tenant was responsible. However, the Tenant has admitted to leaving holes left in the walls leftover from shelves. On the basis of the Tenant's direct testimony, I grant a nominal award of \$40.00 for the holes left in the walls.

The Landlord has established a total monetary claim of \$810.00. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain the

\$437.00 security deposit in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for the balance due of \$423.00.

Conclusion

The Landlord is granted a monetary order for \$423.00.
The Landlord may retain the security deposit.

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: February 21, 2012.

Residential Tenancy Branch