

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, for money owed or compensation for damage or loss and the 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 confirmed receipt of the evidence submitted by the other party, I am satisfied that both have been properly served. The Tenant stated during the hearing that the Landlord's invoice from Citrus-O was not received, but has conceded the cost of the carpet cleaning of \$164.64 as stated on the invoice.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

Both parties agree that the Tenancy ended on May 31, 2012 and that the Landlord received the Tenant's forwarding address in writing on the same day. Both parties agreed that the Landlord currently holds a security deposit of \$975.00.

The Landlord seeks a monetary claim of \$324.78 for the replacement of the stove door consisting of a \$289.99 plus 12% HST based upon the quote from handy appliances. The door is on back order awaiting delivery. The Tenant does not dispute the damage, but states that the scratches can be repaired based upon a product from Reliable Parts called, "Scratch-B-Gone Stainless Steel Repair Kit" for \$44.95 plus tax. The Landlord stated that she contacted Reliable Parts and spoke to a customer service agent who stated that this product was not appropriate for the damaged stove as it is a laminate finish and not a true stainless steel appliance.

The Tenant states that the Landlord did return the security deposit of \$975.00 as of the date of the hearing. The Landlord has confirmed holding the deposit awaiting this hearing.

Analysis

I find based upon the evidence of both parties that the Landlord has failed to establish her claim. The Tenant's direct testimony confirms that damage occurred to the stove door, but the Landlord has failed to establish her claim because the door replacement (\$324.78) is based upon an estimate and has not been replaced. The estimate range for the labour for the replacement door is between \$150.00 - \$185.00 plus HST for the possible combined total of \$552.16 to \$594.72. The Landlord stated in her direct testimony that she is unable to obtain an invoice for the true cost until the door is replaced as the sales amount is not yet complete. However, based upon the direct testimony of the Tenant who does not dispute that damage has occurred or the cost of the replacement door I find that the Landlord is entitled to a nominal award equal to the amount of the door of \$324.78.

The Tenant has conceded the cost of the carpet cleaning for \$164.64 based upon the Landlord's Citrus-O invoice.

The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord has established a total claim of \$539.42.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find based upon the evidence of both parties that the Landlord has failed to apply to keep all or part of the security deposit and is in contravention of section 38 (1) of the Act. The Landlord has extinguished her right to make a claim against the security deposit pursuant to section 38 (6) of the Act. The Tenant is entitled to a monetary order for the return of the \$975.00 security deposit.

Section 72 of the Act states,

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The Landlord has established a monetary claim of \$539.42 for damages. The Tenant has established a monetary claim for \$975.00 for the return of the security deposit. The Tenant is granted a monetary order for the balance owing of \$435.58.

Conclusion

The Tenant is granted a monetary order for \$435.58.

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: July 31, 2012.

Residential Tenancy Branch