



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repairs, an unreturned parking pass, cost of mailing and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for the cost of repairs, an unreturned parking pass, cost of mailing and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on September 01, 2011 and ended on May 31, 2012. Rent was \$1,790.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$875.00.

The landlord made an application for damages and to retain the security deposit in a timely manner which is within 15 days of the end of tenancy.

The landlord is claiming the cost of repairs to the outside of the door to the rental unit and to the wall in the hallway, across from the rental unit. The landlord filed a letter written by the building manager that states that the tenant moved out on May 30 and 31, did not book the elevator, and damaged the external side of the unit's door, the door frame and the wall across the unit door.

The tenant stated that he had informed the building manager that he would be moving out a few of his belongings at a time and therefore did not book the elevator. The tenant denied having caused damage to the door or the wall outside the unit. He stated that on May 30, he participated in a move out inspection and this damage was not noticed or recorded in the inspection report.

The tenant also stated that the occupant of the unit next door was moving in at the same time. The tenant testified that the building manager did not come to the floor of the unit when he was moving out. The tenant questioned the statement of the building manager that the damage was caused by the tenant.

The landlord is claiming the following:

1.	Repairs to door and wall	\$813.68
3.	Mailing costs	\$10.68
4.	Filing fee	\$50.00
	Total	\$899.36

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the damage was to the exterior of the door and to a wall in the common hallway. The building manager informed the landlord that the tenant had caused the damage but he was not present during the move out and did not provide the landlord with any other evidence to support his allegation.

While I find that the damage could have been caused by the tenant because he did move out that day, it is also possible that the occupant of the adjacent unit, who was moving in that same day, could have caused the damage. In addition, the move out inspection report does not indicate the presence of this damage.

The area of the damage is located in a common hallway which is accessible to all the occupants of the floor. The hallways are monitored by camera and the landlord could have provided some footage that would show that the tenant caused the damage.

I am unable to determine whether the damage was caused by the tenant for the following reasons:

1. The damage was located in a common area, to which all residents of the floor have access
2. There is no eye witness or camera footage to confirm that the tenant caused the damage
3. The damage was not recorded in the move out inspection report and the tenant was not notified of this damage during the inspection
4. The occupant of the adjacent unit moved in the same day as the tenant was moving out

Therefore, I must make my decision based on the evidence in front of me. Based on the contradictory testimony of both parties and the lack of sufficient documentary evidence to support the claim, I find that the landlord has not established a claim to repair damage to the exterior of the rental unit. However, I do find that the landlord is entitled to \$25.00 for the unreturned parking pass.

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly, the landlord's claim for mailing costs is dismissed.

Since the landlord has not proven most of her claim, she must bear the cost of filing her application.

I order that the landlord retain \$25.00 from the security deposit and return the balance of \$850.00 to the tenant.

Conclusion

The landlord must return \$850.00 to the tenant within 15 days of receipt of 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: August 16, 2012.

Residential Tenancy Branch