



Dispute Resolution Services

Page: 1

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 damages 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 started on Jul 1, 2010 and ended on March 31, 2014. Rent of \$2,800.00 was payable monthly on the 5th day of each month. At the outset of the tenancy the Landlord collected \$1,350.00 as a security deposit. No move-in or move out condition inspections were conducted or offered by the Landlord.

The Landlord submits that the Tenant removed the window coverings from the unit without the Landlord's permission. The Landlord does not know the age of the coverings and states that he bought the house in 2010. The Landlord claims the costs to replace the curtains.

The Tenant states that during the tenancy the window coverings had been removed and stored in boxes as they were all stained and very old. The Tenant states that they were taken during their move out by accident and when they found the boxes they were returned to the Landlord who refused to take them. The Landlord agrees that the Tenant brought two boxes and states that the Landlord did not open the boxes or go through the boxes because there should have been more. The Landlord states that he did not take the boxes because he wanted the Tenant to also hang the curtains and replace the rods.

The Landlord states that the Tenant damaged the garage door requiring the replacement of a part. The Landlord states that the door worked okay at the onset of the tenancy and the Tenant did not report it as not working. The Landlord has no idea of the age of the mechanical parts of the door. The Landlord claims the cost of its replacement. The Tenant states that the garage door is an old system and that during the tenancy it worked intermittently. The Tenant states that a part was hanging from the onset of the tenancy and that it would need to be held away from the door as it opened or closed. The Tenant states that they informed the Landlord of the problem about a year into the tenancy but that it was never inspected or repaired.

The Landlord states that the cover guard for the stove hood was missing at move-out and that it was new at move-in. The Landlord claims the cost of its replacement. The Tenant states that there was never such a guard.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding

party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence that the Landlord refused to accept the return of the window coverings, I find that the Landlord has failed to mitigate its claim to replacement of those coverings and I dismiss the claim. Given the lack of a move-in and move-out inspection and considering the Tenant's overall credible evidence, I find that the Landlord has not shown on a balance of probabilities that the Tenant caused the damages in relation to the stove hood guard and garage door. I therefore dismiss these claims and in effect the Landlord's application is dismissed. I order the Landlord to return the security deposit of \$1,350.00 plus zero interest to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,350.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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, 2014

Residential Tenancy Branch

