



Dispute Resolution Services

Page: 1

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 for damage to the door of the refrigerator, for the cost of painting and for the recovery of the filing fee. The landlord is also applying to retain the security deposit in satisfaction of the claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2013 and ended on March 31, 2015. The rent at the end of the tenancy was \$4,050.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit in the amount of \$1,800.00. The tenant also paid a pet deposit which was returned to the tenant at the end of tenancy.

On March 31, 2015, the tenant and the landlord's agent participated in a move out inspection. The landlord's agent filled out the report and both parties signed in agreement. The only major damage recorded on the report was damage to the door of the refrigerator. A copy of the report was filed into evidence. The tenant provided the landlord with a forwarding address that day.

The tenant took photographs of the unit on March 31, 2015 and filed them into evidence. The landlord stated that he resides out of the city that the rental unit is located in. The landlord visited the unit in June which is over two months after the end of tenancy. During that visit the landlord took photographs of the unit and filed copies into evidence.

The landlord stated that his photographs show detail while the tenant's do not. The landlord's photographs show areas of the wall that have been touched up but appear not to have been finished. The tenant stated that he hired a professional painter to touch up areas that needed it. The landlord stated that the job was done poorly and had to be redone.

The landlord filed an estimate for \$1,500.00 to redo "*poor quality paint work*" The landlord stated that it ended up costing him \$2,500.00 but he did not receive a receipt in time to file into evidence. The landlord also stated that the rental unit sold on July 31, 2015.

The tenant agreed to having caused damage to the door of the refrigerator. The landlord is claiming \$600.00 to replace the door. The landlord testified that he had not replaced the door. The tenant stated that he had found estimates to replace the door for \$500.00 and had already agreed to pay this amount to the landlord.

Analysis

Based on the evidence and testimony of both parties, I find that the parties offered contradictory evidence regarding the condition of the painting of the rental unit. The photographs of both parties are also contradictory. The landlord's photographs are close up pictures and show a poor paint job while the tenant's photographs are taken from a distance and do not show any discrepancies.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord was making a claim for the cost of repainting the rental unit. The move out inspection report did not indicate any areas that needed to be repainted or were damaged by the tenant's attempts to repaint. In addition the landlord did not provide any proof of the cost incurred by him to paint the rental unit.

Lastly, the photographs that the landlord provided were taken more than two months after the tenancy ended. For all the above reasons, I find that the landlord has not proven his claim and accordingly I dismiss the landlord's claim for \$1,500.00.

The landlord has also claimed \$600.00 to replace the door of the refrigerator. The landlord filed photographs to show the damage and the tenant agreed that he was responsible for the damage. The landlord did not file proof of what it would cost to replace the door and the tenant stated that he found out that it would cost \$500.00. The tenant agreed to pay \$500.00. In the absence of evidence to show the cost of replacing the door, I award the landlord the amount that the tenant agreed to pay.

Since the tenant had offered the landlord \$500.00 prior to the hearing and the landlord has not proven the remainder of his case, he must bear the cost of filing his own application.

Overall the landlord has established a claim of \$500.00 for the replacement of the door of the refrigerator. I hereby order that the landlord retain this amount from the security deposit and return the balance of \$1,300.00 to the tenant. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$1,300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant an order in the amount of **\$1,300.00**.

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: September 22, 2015

Residential Tenancy Branch

