



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlord's Application and evidence. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenants' security deposit in satisfaction of their monetary claim?

Is the landlord entitled to recover the filing fee from the tenants for this application?

Background and Evidence

This fixed-term tenancy began in February 2015 with monthly rent set at \$1,700.00. The landlord still holds a \$800.00 security deposit. The tenants moved out on February 28, 2017, and provided a forwarding address to the landlord upon move out.

The landlord applied to retain the \$800.00 security deposit in partial satisfaction of the \$774.11 monetary claim below:

Item	Amount
Stove Repair	\$484.03
Door Repair	78.08
Screen Repair	112.00
Filing Fee	100.00
Total Monetary Order Requested	\$774.11

The landlord testified that the home was over 25 years old, but was renovated 10 years ago. The landlord testified that the tenants had damaged the stove top, scratching it, and it cost \$484.03 to fix. The landlord also testified that the door trim was damaged, costing \$78.08 to fix. The landlord testified that the tenants had also damaged the screen for the door.

The landlord testified that both a move-in and move-out inspection were completed, but no reports were given to the tenants. The landlord did not submit any reports in their evidence, but included black and white photos of the damage.

The tenants dispute being responsible for the damage stating that in the absence of any reports the landlord did not establish that any of the damage occurred during this 2 year tenancy. The tenants testified that the screen door was not fastened, and was used frequently as the main door for the suite. The tenants testified that the trim was damaged due to wear and tear. The tenants dispute damaging the stove, testifying that it was at least 10 years old, and any damage was pre-existing.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord provided a very detailed summary of the damages that she was claiming. The tenants did not dispute that there was damage to the suite, but they did argue that these damages occurred prior to their tenancy. The landlord testified that the home was renovated 10 years ago. Without any move-in or move-out inspection reports, I find that there is no way to determine which damages occurred during this 2 year tenancy, and what the pre-existing

condition of the home was. Although I acknowledge that the landlord did incur the cost in repairing the home, I find that the landlord did not provide sufficient evidence to support any kind of finding that the tenants are responsible. In the absence of documentation or witness testimony to support whether the damage was caused by the tenants, I am dismissing the landlord's application for monetary compensation.

As the filing fee is awarded to a successful party after a hearing, the landlord's application for recovery of the filing fee is dismissed.

Conclusion

The landlord's entire application is dismissed.

I issue a Monetary Order in the amount of \$800.00 in the tenants' favour which allows for the return of the tenant's security deposit.

The tenants are provided with this Order and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 15, 2017

Residential Tenancy Branch