



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, 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, for bank charges for a returned cheque and for the filing fee. The landlord also applied to retain a portion of the security deposit in satisfaction of her claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged that neither party had filed documents into evidence. The landlord stated that she had filed a copy of the tenancy agreement with her application. There was no documentary evidence before me at the time of the hearing.

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 May 01, 2016 and ended on August 31, 2017. The monthly rent was \$2,350.00. Prior to moving in, the tenant paid a security deposit of \$1,175.00 and a pet deposit of \$1,175.00. The parties agreed that the pet deposit was returned to the tenant and that the landlord held the security deposit of \$1,175.00. The landlord made this application within the legislated time frame of 15 days.

The landlord testified that a move out inspection was conducted in the presence of the tenant, but a report was not created. The landlord stated that she found the glass plate inside the microwave oven cracked and she was unable to replace it.

The landlord testified that she installed a new microwave oven and was claiming \$200.00 for the cost of replacement.

The landlord also testified that there was damage to the refrigerator and she had it repaired it at a cost of \$364.00 which formed part of her monetary claim.

The tenant denied having caused damage to the appliances and stated that the microwave oven was damaged at the start of tenancy which caused the glass plate to shuffle inside the oven when in use. The tenant stated that due to the existing damage to the microwave oven, the glass plate eventually cracked.

The landlord is also claiming \$15.00 for a cheque that was returned for insufficient funds (nsf) and \$25.00 for late rent. The tenant stated that she did not recall a term in her tenancy agreement that required her to pay \$25.00 to the landlord for late rent. The tenant agreed that her rent cheque was returned for lack of funds and agreed to pay the bank charge of \$15.00.

The landlord agreed that she had not filed any documents to support her monetary claim of \$604.00. The landlord is also claiming the recovery of the filing fee of \$100.00.

Analysis

The testimony of the tenant and the landlord is conflicting with regard to the damage to the microwave and refrigerator. The tenant denied having caused damage to the appliances and the landlord testified that the tenant was responsible for the damage.

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.

The landlord is claiming that the tenant caused damage to the appliances while the tenant argues that the damage to the microwave oven existed at the start of tenancy and denied damage to the refrigerator. The landlord did not file evidence such as photographs, invoices, inspection reports etc. to support her claim.

The landlord testified that a move out inspection was carried out in the presence of both parties but a report was not created.

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for.

Based on the lack of documents filed into evidence to support the landlord's claim and the testimony of both parties, I find that the landlord has not proven that the tenant is liable for the damage to the appliances. Therefore the landlord's claim for the cost to replace or repair the appliances is dismissed.

The tenant has agreed to cover \$15.00 for the returned cheque.

Since the landlord has not been successful in proving her claim, she must bear the cost of filing this application.

I order that the landlord retain \$15.00 from the security deposit of \$1,175.00 and return the balance of \$1,160.00 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,160.00**.

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: April 11, 2018

Residential Tenancy Branch