



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *MND, MNDC, MNSD, FF.*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for cleaning and repairs to the rental suite, pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The tenancy started on December 01, 2008 and ended on June 01, 2008. In an earlier proceeding dealing with an application by the tenant, a decision dated November 28, 2008, was rendered finding that the Landlord had contravened section 38 of the Act. The landlord was ordered to pay the tenant double the security deposit plus interest on the base amount, under section 38 of the Act. Today's hearing and my decision on the matters before me today are independent and not related to this previous claim. The landlord acknowledged that the issue of the security deposit was already dealt with and hence this part of the landlord's application to retain the security deposit is dismissed. The landlord testified that the landlord now realizes that a claim for dispute resolution is required under the Act in order to pursue damages and is therefore making this application under section 67 of the Act.

Issues to be decided

Is the landlord entitled to a monetary order for the cost to clean the carpet, repair the refrigerator and recover the filing fee?

Background and Evidence

The landlord testified that the tenancy ended on June 01, 2008 and the tenants moved out without contacting the landlord. The landlord found the key to the suite on the kitchen counter and also found that the tenants had left the carpet in a dirty condition and had damaged the refrigerator. The landlord stated that the suite was new when the tenants moved in. The landlord has submitted into evidence receipts dated June 03, and June 08, 2008 for carpet cleaning in the amount of \$420.00 and for repair to the refrigerator in the amount of \$354.14. The landlord is claiming these two amounts and the filing fee for a total of \$824.14.

The tenant stated that at the start of tenancy, the tenant had reported to the landlord that the handle of the refrigerator was loose. The tenant stated that this was not fixed during the time of the tenancy and the handle was placed in a drawer. The tenants also stated that on June 01, 2008 the landlord was out of town and the move out inspection was conducted by the landlord's daughter and uncle, during which no problems were identified. The tenants state that they left the suite clean and did not cause any damage to the refrigerator.

Analysis

It is important for the parties to know that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the Landlord, to 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 Tenant. The landlord has not submitted into evidence, photographs to support the above claim. The tenants are denying that the alleged damage was caused by them and in such cases where in the verbal evidence given during the hearing is contradictory, the burden of proof lies with the landlord who is making the claim for damages. The landlord has only submitted two receipts into evidence and hence the landlord's claim for cleaning and repair do not meet all the components of the above test and therefore I find that the landlord has not proven the landlord's case.

Conclusion

The landlord has not established a monetary claim and hence her application is dismissed in its entirety. The landlord must bear the cost of filing this application.

Dated January 22, 2009.

Dispute Resolution Officer