

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

MNSD, FF.

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order to retain a part of the security deposit for costs incurred for painting, cleaning, and repair to the rental suite. The landlord also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to retain part of the security deposit to recover cleaning costs, painting and repair costs and the filing fee?

Background and Evidence

The tenancy began on June 01, 2008 and ended on March 30, 2009. The monthly rent was \$850.00. Prior to moving in, the tenant paid a security deposit of \$425.00. A move out inspection was conducted on March 28, 2009.

The landlord testified that he noted some deficiencies during the move out inspection, but the tenant was not in agreement and refused to sign the move out inspection report. The landlord has applied to retain the following, from the security deposit:

1.	Replacement of broken shower head	\$30.00
2.	Repair holes and paint walls	\$60.00
3.	Suite Cleaning	\$80.00
	Total	\$170.00

The landlord did not file any documentary evidence to support his monetary claim.

The tenant stated that she had cleaned the suite prior to moving out and had not caused any damage to the walls or the shower head. The tenant stated that she was entitled to return of the entire amount of the security deposit.

Analysis

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 is claiming damages and the tenant is not in agreement with the landlord. Since the landlord is claiming damages, the burden of proof is on him to prove the claim. The landlord has not provided any evidence by way of photographs, inspection reports or receipts to prove that the damage exists and if so was caused by the negligence on the part of the tenant.

For the above reasons, I find that the landlord has not proven his case and therefore his application is dismissed. The landlord must bear the filing fee for this application. The tenant is entitled to the return of the full security deposit plus accrued interest.

Conclusion

The landlord's application is hereby dismissed. I order the landlord to return the security deposit plus accrued interest to the tenant.

Dated July 08, 2009.

Dispute Resolution Officer