



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNSD, FF

Introduction

This was an application by the landlord to keep all or part of the security deposit for damage to the rental unit. The application was inclusive of a claim to recover the filing fee for this application.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties were also given opportunity to discuss or settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started July 01, 2004 and ended May 01, 2010. Rent was \$1455 per month. At the start of the tenancy the landlord collected a security deposit of \$700. At the outset of the tenancy the parties conducted a move in inspection. At the end of the tenancy the parties conducted a move out inspection. Both inspections were attended by both parties and recorded on a condition inspection document. At the end of the tenancy the parties did not agree on how the security deposit would be administered. The tenant did not agree to any deductions from the security deposit.

The landlord claims costs to remediate the rental unit - citing a list of deficiencies they noted during the move out condition inspection. The tenant disputes most of the costs claimed by the landlord to remediate their list of deficiencies. The tenant's testimony is

that the landlord's claims are for either, a deficiency noted at the start of the tenancy, or as the result of ordinary, or reasonable wear and tear of a 6 year tenancy.

The landlord provided their list of deficiencies with a list of estimates associated for materials and / or labour at \$35 per hour. The landlord initially claimed remediation costs would exceed the security deposit. The landlord testified that work on the list of deficiencies was eventually done, but that they neglected to provide supporting evidence in their possession, of receipts for the work or photographs of their claims.

The tenant disputes the landlord's claims of damage and estimates of costs; however, the tenant conceded to costs associated with oil stains on the garage floor (\$35), a carpet stain in the living room (\$40), and a hole in the 2nd bedroom ceiling from a ceiling hook (\$25).

Analysis

If a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (less depreciation or wear and tear), whichever is less. The onus is on the landlord to prove the damage was validly caused by the tenant or excessive wear and tear. The onus is on the tenant to show that the claim or the expenditure is unreasonable.

In this matter the landlord relies on their determination that the tenant caused the purported damage and their estimates for its remediation. The tenant relies on their argument that the landlord cannot establish that they caused all the damages claimed, and that any other deficiencies were the result of ordinary wear and tear.

On the face of the evidence and on the balance of probabilities, I find the landlord has not supported their claim with sufficient evidence that the tenant caused damage to the rental unit in the realm of excessive wear and tear. It was available to the landlord to provide such evidence in the form of photographs showing the extent of their claim. I find the landlord has not sufficiently met their burden of proof.

I heard the testimony of both parties, and I accept the tenant's testimony that they caused damage or excessive wear and tear in respect to a portion of the landlord's claim, and grant the landlord **\$100** for: oil stains on the garage floor (\$35), a carpet stain in the living room (\$40), and a hole in the 2nd bedroom ceiling from a ceiling hook (\$25). As the landlord was partially successful, I grant the landlord partial recovery of

the filing fee in the amount of **\$10**. The balance of the landlord's claim is **dismissed**, without leave to reapply.

Residential Tenancy Branch Policy Guideline states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

As a result, in this application the landlord requested the retention of the security deposit in satisfaction of their monetary claim. Because the claim has been mostly dismissed without leave to reapply it is appropriate that I order the return of the balance of the tenant's security deposit with any accrued interest. I so order and I grant the tenant a Monetary Order for the amount of **\$614.80**.

Conclusion

I Order the landlord may retain **\$110** from the security deposit and return the balance to the tenant, forthwith.

I grant the tenant a Monetary Order under section 67 of the Act for the sum of **\$614.80**. If necessary, this order may be filed in the Small Claims 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*.