



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MND, MNR, SS

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. The tenants claim that they had received no evidence from the landlord; however they stated that they wish to proceed with the hearing anyway. The landlord claims that the only reason the tenants did not receive the evidence packages is they refuse the registered mail that was sent to them, a claim that the tenants deny.

I also gave the parties the opportunity to give their evidence orally.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$13,000.00. The applicant is also requesting that the respondents bear the \$100.00 cost of the filing fee that was paid for this dispute resolution hearing.

Background and Evidence

The landlord stated that:

- The rental unit was in good condition with no damages when the tenants took possession.

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- The tenant signed a tenancy agreement which had additional terms and conditions in which the tenants agreed that the rental unit and the appliances in the rental unit were all in good condition.
- At the end of the tenancy, the tenants left the rental unit in a very poor and damaged condition and the landlord has an estimate for repairs that totals \$12,677.00. The estimate was done by handyman that has often done work for him.
- No move in inspection report was done, because the additional terms and conditions on the tenancy agreement outlined the condition of the rental unit when the tenants took possession.
- The tenants also failed to move out when they were supposed to and as a result the landlord is also asking for the full rent for the month of June 2009.

The respondents stated that:

- When they rented the house it was in very poor condition and in need of numerous repairs.
- They did no damage to the house, and in fact if anything they made improvements to the rental unit.
- They did sign a tenancy agreement; however they do not recall the additional terms and conditions page, which has been supplied by the landlord, as being a part of that tenancy agreement.
- Numerous things broke down during the tenancy and were either not repaired or repaired only after frequent requests by them to have the repairs done.
- They did no damage to any of the appliances and if the appliances are not working it is due to normal wear and tear and not due anything that was done by them.
- They agreed to pay an extra \$600.00 and moved out of the rental unit in the first week of June as they had agreed with the landlord and the keys were dropped

off at the only contact they had for the landlord as they could not drop them off to the landlord as he was out of town.

- They do not owe any rent to the landlord, as the landlord took the rent that was owed out of their security deposit, leaving a \$1000.00 balance.

Analysis

Damages

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met and in this case it is basically just the landlord's word against that of the tenants.

The landlord claims that there is a written tenancy agreement, that has 10 additional terms and conditions, however the landlord has failed to supply a copy of that tenancy agreement. The landlord has sent a page with 10 additional terms and conditions on it; however that page has not been signed by the landlord or the tenant, and the tenants do not recall those terms and conditions being a part of the original tenancy agreement.

The landlord did not do the move in inspection report that is required under the Residential Tenancy Act and therefore there is no record of the condition of the rental unit signed by both parties.

Based on the above it is my decision that the landlord has not met the burden of proving the majority of his claim for damages.

It is my finding however that the landlord has shown that the tenants left a large amount of garbage and junk behind at the end of the tenancy, and therefore I will allow the landlords \$350.00 claim for removal of that garbage.



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Rent

I deny the landlords claim for rent, because I am not convinced that the tenants did not vacate the rental unit when they were supposed to. Therefore since the landlord took the last two months rent of \$1800.00 per month, for a total of \$3600.00 plus an additional \$600.00 the tenant agreed to for a portion of June 2009, out of the tenant's \$5,200.00 security deposit, there is no further rent outstanding.

Conclusion

I have only allowed a \$350.00 of the landlord's application and the remainder is dismissed without leave to reapply. However since the landlord still holds \$1000.00 of the tenants security deposit, I have not issued an order for the tenants to pay the \$350.00 to the landlord, but have issued an order for the landlord to return the difference of \$650.00 to the tenants.

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: January 21, 2010.

Dispute Resolution Officer