

DECISION

Dispute Codes MND, MNR, MNSD

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$2025.00. The applicant is also requesting an order allowing him to retain the full security deposit towards this claim; however in a previous hearing the landlord was ordered to return the full security deposit to the tenant and I have no authority to change that order.

I will therefore deal with the requested monetary order only.

Background and Evidence

The applicant testified that:

- The tenants made unauthorized deductions from the rent as follows:
 - June 2009 -- \$575.00
 - July 2009 -- \$200.00
 - August 2009 -- \$300.00
- The tenants also used up \$500.00 worth of pool supplies that were left at the rental property which he did not authorize them to use.

- The tenants also left the property in need of cleaning up at the end of the tenancy and a cost of \$400.00 to have that cleanup done

The applicant is therefore requesting an order that the respondent's paid \$1975.00 plus the \$50.00 filing fee for a total of \$2025.00.

The respondent testified that:

- They had negotiated the deductions from the rent with the landlord because of problems with the swimming pool at the rental property.
- The deduction in June of 2009 was because the landlord failed to get the pool on the rental property cleaned and ready for use prior to them moving into the rental property and as a result they had to pay to have a professional come in and clean and open the pool and prepare it for use.
- The deduction from the July 2009 rent was to cover the extra cost of chemicals for the month of June 2009, that were required due to a leak in the pool that caused the pool level to go down significantly every day and required the use of more than the usual amount of chemicals.
- The deduction from the August 2009 rent was to cover the cost of extra chemicals for the months of July and August 2009.
- The landlord was aware that we were deducting these amounts from the rent due to problems with the pool and made no objection at the time.
- They in no way used \$500.00 of pool supplies belonging to the landlord. There was a small amount of chemicals there that the landlord said we could use, and he advised us he had paid approximately \$90.00 for those chemicals. These chemicals were used in the initial attempts to get the pool cleaned and open for years a cost that should have been born by the landlord.
- They left the yard of the rental property in as good or better condition than it was when they moved in and the landlord made no mention of any problem with the condition of the yard when they moved out.
- No move-in condition report or move-out condition report was ever done by the landlord.

The respondents therefore believe this full claim should be dismissed.

Analysis

It is my decision that the tenants have not shown that the deductions that they made from the rent were authorized or negotiated with the landlord, and I do not accept the argument that the fact that the landlord did not dispute them at the time meant that he accepted the deductions.

I therefore will allow the landlords claim for the \$1075.00 that was deducted from the rent without authorization.

I deny the claim for pool supplies, as it is my decision that the landlord has not met the burden of proving that the tenants used \$500.00 worth of his pool supplies. It is basically his word against that of the tenants and since the burden of proving a claim lies with the applicant, when it is just the applicant's word against that of the respondents that burden of proof is not met.

I also deny the claim for yard cleanup. Again it is my finding that the landlord has not met the burden of proving that the yard was left in any worse condition than when the tenants moved into the rental unit. Unfortunately no move-in inspection or move-out inspection report was done and therefore again it is basically the landlords word against that of the tenants.

I will allow the claim for the \$50.00 filing fee, as I have allowed a large portion of the applicants claim.

Conclusion

I have issued an order for the respondents to pay \$1125.00 to the applicants.

I make no order regarding the security deposit, as the matter of the security deposit has been dealt with in a previous hearing and I have no authority to change that previous decision.

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: May 18, 2010.

Dispute Resolution Officer