

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and his witness/agent.

While the landlord's application indicated a monetary claim of \$1,350.00 for unpaid rent and utilities, it also indicated there was a cost for fixing a damaged window but no amount was provided at that time. At the outset of the hearing the landlord indicated the cost to repair the window was \$491.00.

As the landlord had indicated this was an issue on the application, I accept the amendment to the landlord's claim to change the amount on his application to include the amount for the window replacement.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 26, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began as a month to month tenancy on October 7, 2009 for a monthly rent in the amount of \$700.00 due on the 1st of the month. A security deposit of \$350.00 was paid on October 7, 2009. The tenancy ended on December 31, 2010 resulting from the tenant's notice to end dated November 29, 2009 giving the landlord one month's notice.

The landlord has submitted a summary of his claim showing:

Description	Amount
Balance of prorated rent for October 2009	\$214.51
Electricity for duration of tenancy	\$435.49
Rent for December 2009	\$700.00
Replacement of living room window	\$491.00
Total	\$1841.00

The landlord testified the tenant had paid \$700.00 on October 7, 2009 which included \$350.00 for the security deposit and \$350.00 towards the rent owed for October 2009 that had been prorated for 25 days in the month.

The landlord also noted the tenant had not paid any monies for electricity despite that being a part of the tenancy agreement or any rent for the month of December 2009. The tenant disputes that he failed to pay any of these items and states he received receipts for all payments but could not produce the receipts as he could not remember where they were. The tenant stated that the documents were on his kitchen table but the landlord entered without his permission and took away his receipts.

The tenant's witness/agent testified that the tenant felt the rental unit was not fit for human habitation resulting to some extent to a rodent infestation. He further stated the tenant had filed a report to the local health authority and that they had provided a report confirming his claim. This documentation was not submitted into evidence.

Analysis

In the case of disputes with little or no documented evidence, I find that where both the landlord and tenant agree on the interpretation of events, there is no reason why disputes cannot be easily resolved. However when the parties disagree with what was agreed-upon or the events, and can only rely on disputed testimony, the testimony by its nature, is virtually impossible for a third party to interpret the actual events.

Having said that in the absence of any receipts from the tenant I find that on the balance of probabilities the tenant has not paid rent for the December 2009 or for the balance due for October 2009 and has not paid utilities as outlined by the landlord.

However, in regards to the landlord's claim for a replacement window, the landlord has provided no evidence that shows the condition of the window at the start of the tenancy or at the end of the tenancy, as he is required to do under Sections 23 and 35 of the *Act*. The landlord has also failed to provide any evidence to substantiate the value of the claim. I therefore dismiss this portion of the landlord's application.

In relation to the security deposit, Section 38(1) states that the landlord must return the tenant's security deposit or file an Application for Dispute Resolution to claim against the security deposit within 15 days of the end of the tenancy. Despite the landlord's testimony that he had been trying to resolve matters with the tenant and his agent during this time, I note the landlord did not file an application until nearly 3 months after the end of the tenancy.

Section 38(6) states should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit. As such, I find the landlord owes the tenant double the amount of the security deposit.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,400.00** comprised of \$1,350.00 rent and utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord must deduct double the amount of the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$700.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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*.

Dated: July 08, 2010.

Dispute Resolution Officer