



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MND, MNDC, MNSD, O

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.

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 \$4579.07 and a request of the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution. The applicant is also requesting that he be allowed to keep the full security deposit towards this claim.

Background and Evidence

The applicant testified that:

- The market value of the rental property at the beginning of the tenancy was \$1800.00 per month, but he agreed to rent the unit to the tenants for \$1500.00 per month on the condition that they would repair the damages in the rental unit that existed from the previous tenant and would clean the unit after the previous tenant vacated.

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- At the end of this tenancy he found that the tenants had failed to complete the repairs and as a result he had to have the repairs done.
- The tenants also left the carpets in the rental unit in need of re-stretching and it is his belief that the damage was caused by improper cleaning techniques which left the carpets very wet.
- The tenants also left the washing machine timer control switch damaged and in need of repair, and it is his belief that the damage was likely caused by misuse.
- The tenants had signed a tenancy agreement that stated that they must vacate on March 31, 2010 or renegotiate.
- The tenants did renegotiate to stay to the end of April 2010 however at the time he did not inform them that he would want more rent, however they did not ask either.
- When he later informed the tenants that a similar unit in the building had rented for \$2300.00 per month and attempted to negotiate higher rent the month of April 2010, the tenants backed out of their agreement to stay to the end of April 2010 and decided to vacate on March 31, 2010.
- By the time the tenants decided not to rent the unit for April 2010 he had very little time to find a tenant for the rental unit and as a result ended up accepting a tenant at \$2010.00 per month which was \$140.00 less per month than market value.
- It is his believe that the tenants breached the tenancy agreement and hindered his ability to re-rent the unit at market value.

The applicant is therefore requesting a claim as follows:

cost to replace burned-out light bulbs	\$26.79
Repair costs for damages left by tenants	\$1150.00
Loss of \$140.00 rental income for 12	\$1680.00

months	
Liquidated damages for breaching tenancy agreement	\$1600.00
Filing fee	\$50.00
Total	\$4629.07

The respondent testified that:

- At the beginning of the tenancy the rent agreed upon was \$1500.00 per month and there was never any agreement that they would repair damages caused by the previous tenant or clean the rental unit in exchange for lower rent.
- The previous tenant was supposed to repair any damages she left and was also supposed have cleaned the rental unit.
- Even though they sent many e-mails to the previous tenant requesting that the repairs and cleaning be done it was never done, although the landlord did come and do some of the repairs.
- They did not damage the carpet in the rental unit, and the need for re-stretching was due to normal wear and tear.
- They did not damage the washing machine and in fact during the tenancy they had no problems with the washing machine switch, and if there was damage after they vacated it can only be considered normal wear and tear.
- They did negotiate with the landlord to stay to the end of April 2010, however in their verbal negotiations the landlord had agreed to keep the rent at \$1600.00 per month.
- The landlord later sent them an e-mail stating that a similar unit had rented for \$2300.00 per month and stating that he wanted to negotiate higher rent.
- Since the landlord was now asking for more rent than was originally agreed upon, they decided they did not want to continue negotiations and inform the landlords that they would vacate at the end of their lease as required.

- They do not dispute the claim for light bulbs, and never did and therefore are willing to pay that portion of the landlords claim.

The respondents are therefore requesting that the landlord's full claim be dismissed and that their security deposit be returned less the \$26.79 required to replace the light bulbs.

The respondents are also requesting that the applicant be required to pay double the security deposit as a penalty for making inappropriate claims.

Analysis

Damages

It is my decision that the landlord has not met the burden of proving that the tenants caused any damages to the rental unit beyond normal wear and tear, or that the tenants had agreed to repair damages caused by the previous tenant.

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.

The landlord has supplied no evidence to support his claim the tenants had agreed to repair damages caused by the previous tenant in exchange for lower rent, it's just his word against that of the tenants and therefore the burden of proof is not been met.

It is also my finding that the landlord has not proven that the damage to the carpet or to the washing machine was the result of any willful or negligent actions on the part of the tenants. There is no evidence to show that this damage is anything more than normal wear and tear.

I therefore deny all the claims for damages, except for the \$26.79 that the tenant has agreed to pay for light bulbs.

Liquidated damages and loss of rental revenue

The tenancy agreement signed by both the landlord and the tenants states that the tenants must vacate by March 31, 2010 or renegotiate.

In this case the parties were negotiating to extend the tenancy by one month however even the landlord has agreed that the negotiations were never finalized.

The landlord testified that when he tried to negotiate the amount of rent that would be paid to extend the tenancy to the end of April 2010, the tenants backed out of the negotiations and informed him that they would vacate on March 31, 2010 as required by the lease.

Therefore it is my decision that since no tenancy agreement was finalized for the month of April 2010, the tenants were required to vacate on March 31, 2010 and therefore the landlord has no claim for liquidated damages or for any loss of income for the following year.

I the claims for liquidated damages and lost income are denied.

Filing fee



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It is my decision that the applicant must bear the \$50.00 filing fee that he paid for his application for dispute resolution, because I have denied the majority of his claim.

The landlord must therefore return the tenants full security deposit of \$800.00, less the \$26.79 for light bulbs which the tenant has agreed to, for a total amount of \$773.71.

I will not order return of double the security deposit, because the landlord apply for dispute resolution within the required time limit and I have no authority to order a penalty against the landlord.

Conclusion

This claim is dismissed in full without leave to reapply, and I have issued an order for the landlord to pay \$773.71 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: August 11, 2010.

Dispute Resolution Officer