



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, CNC, OPB, MND, MNDC, OLC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession and a monetary order. The tenant has applied to cancel a notice to end tenancy, for a monetary order and for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The landlord entered the teleconference 25 minutes after the start of the hearing and exited the teleconference twice during the call.

The matters relating to ending the tenancy have been dealt with at a prior hearing at which the parties had agreed to end the tenancy effective September 30, 2010. At that hearing the parties also agreed the tenant would complete remediation efforts to complete all repairs to damage caused by the tenant and that this hearing would deal solely with outstanding monetary issues.

As such, I accept amendments to the applications of both parties to exclude the matters related to the end date of the tenancy.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled; to a monetary order for damage to the unit; for money owed or compensation for loss or damage under the *Act*, regulation, or tenancy agreement and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Act*.

It must also be decided are if the tenant is entitled to a monetary order for money owed or for compensation for damage or loss under the *Act*, regulation or tenancy agreement; to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by both parties on March 9, 2009 for a 1 year fixed term tenancy beginning on March 15, 2009 for a monthly rent in the amount of \$2,200.00 due on the 1st of the month and a security deposit of \$2,200.00 was paid. The tenant is seeking return of \$1,100.00 from the security deposit as it exceeds the allowable amount under the Act.

The tenancy agreement stipulates the landlord will pay for water utilities and provide furniture (unspecified) and the tenant will pay for electric, gas, telephone, cable and oil utilities. The agreement goes on to say the landlord will include a stove, refrigerator, washer, dryer, dishwasher and microwave.

The landlord seeks to recover costs involved in restoring the rental unit resulting from water damage due to an overflowing sink in the laundry room. The parties had agreed at the previous hearing that the tenant would make the necessary repairs by the end of July, 2010. The tenant testified that he is not yet finished with the repairs. The landlord is out of the country and has provided no evidence that she has inspected the work to date or that she wanted to proceed with that issue at this hearing.

The landlord also seeks recovery of fines imposed by the strata resulting from the tenant committing parking violations and installing security cameras. Both parties confirmed that the tenant signed the strata council Form K informing the tenant of the strata rules. The tenant testified that once he was told by the landlord of the infractions he stopped contravening the bylaws.

The tenant contends that when he moved in he thought the landlord would be removing all the furniture and that he had no need to use the landlord's furniture so with the approval of the landlord's agent at the time the tenant moved the landlord's furniture into storage. The tenant contends the agent agreed to pay for the moving and storing of the furniture.

The landlord is seeking replacement of that stored furniture because much has been dismantled and she is concerned that pieces will have been lost so she cannot put them back together again. The tenant contends that no pieces were lost and the furniture can be reassembled.

The tenant indicated that he identified to the landlord that the alarm system was not working nor was it being monitored and she told him to have it fixed. The landlord testified that she told the tenant to find out what was wrong with the system and get back to her; she also states she did not authorize any repairs or changing service providers. The landlord states that when the tenant changed service provider she incurred costs for breaking her contract with her previous provider.

Analysis

As to the landlord's claim for \$8,000.00 for repairs to the rental unit for flood damage, I find the matter had been dealt with in the previous hearing where the parties agreed that the tenant would make the required repairs, and the matter is considered *res judicata*. *Res judicata* is the doctrine by which an issue that has been settled by judicial decision cannot be re-adjudicated.

Until such time as the landlord has inspected the repairs made by the tenant to determine if the tenant has made the repairs in accordance with their previous settlement agreement, I find this portion of the landlord's application to be premature, and dismiss it with leave to reapply should the repairs not be completed.

I also find the landlord's application for \$3,450.00 for replacement furniture to be premature as she cannot, at this time confirm that her furniture requires replacement. I do however, order that the tenant reassemble and repair any damage to the furniture and reinstall the furniture prior to the end of the tenancy. I dismiss this portion of the landlord's application with leave to reapply.

As to the landlord's claim regarding the strata fines, I find that the landlord failed to inform the tenant adequately of the strata bylaws at the start or at any point during the tenancy by failing to have the tenant sign the strata's Form K. As a result, I find the landlord cannot expect the tenant to pay these fines. However, the tenant should now consider himself warned regarding parking and mounting of cameras on exterior common area portions of the complex. I dismiss this portion of the landlord's claim.

Despite the tenant's testimony that the landlord's agent had made an agreement with him to pay for the moving and storage of the landlord's furniture the tenancy agreement states the rental unit was furnished and no written agreement was made between the parties.

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

As a result, I find the tenant has failed to establish there was an agreement between the parties to rent the unit without furnishings and in fact, the tenancy agreement confirms the opposite. I therefore dismiss this portion of the tenant's application without leave to reapply.

In relation to the tenant's claim for reimbursement for costs associated with the security system and monitoring. There is no mention, in the tenancy agreement, about inclusion of a working alarm system or a service contract for monitoring. There is no additional agreement regarding these services, I therefore find that the landlord was not obliged to

provide any specific alarm or security monitoring services. I dismiss this portion of the tenant's application without leave to reapply.

While I accept the landlord may have breached her contract with her alarm system monitoring service provider, as a result of the tenant's actions, she has failed to submit any evidence confirm any financial loss. As a result, I dismiss this portion of the landlord's application without leave to reapply.

Finally, I accept the tenant's claim that the tenant provided the landlord with a security deposit in the amount of \$2,200.00 in contravention of Section 19 of the Act that stipulates a landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

Conclusion

Based on the analysis above, I dismiss the landlord's application in its entirety, with leave to reapply only as noted above on each issue.

In addition, I find that the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,150.00** comprised of \$1,100.00 return of security deposit in excess of allowable and as the tenant was only partially successful, \$50.00 of the \$100.00 fee paid by the tenant for this application.

I order the tenant may deduct this amount from future rent owed, in accordance with Section 72(2)(a).

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 16, 2010.

Dispute Resolution Officer