



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to Applications for Dispute Resolutions being filed by the tenant and the landlord.

The tenant seeks:

1. A monetary order for the return of the security deposit;
2. A monetary order for compensation for damage or loss; and
3. Recovery of the filing fee.

In total the tenant seeks \$5,000.00.

The landlord seeks:

1. A monetary order to be allowed to retain the security deposit;
2. A monetary order for compensation for damage or loss; and
3. Recovery of the filing fee.

In total the landlord seeks \$5,000.00.

Both parties appeared at the hearing and gave evidence under oath. I accept that both parties were duly served with the respective applications for dispute resolution.

Background and Evidence

This tenancy began in July 2006 and ended February 20, 2010. The tenant testified that he paid a security deposit of \$547.50 when the tenancy began. The tenant says he provided his forwarding address to the landlord yet his security deposit has not been returned to him. The landlord agrees that he received the tenant's forwarding address on April 6, 2010. The landlord also agrees that he has not returned the security deposit to the tenant but says this is because the parties, knowing a further Terasen and Hydro bill would be forthcoming, agreed that the landlord should retain the deposit until those invoices arrived. After their arrival the landlord could determine the tenant's 60% share and deduct that from the security deposit he held. The tenant says he did not agree to this. The tenant says he expected his deposit to be returned to him and, once he received copies of the Terasen and Hydro invoices from the landlord he would pay his share to the landlord at that time. The tenant therefore claims double the deposit in the sum of \$1,095.00. Although in his written submissions the tenant does not "I agree my landlord to deduct the last hydro and gas bills" (*reproduced as written*).

The tenant also claims \$4,480.00 which he says represents return of all of the rent he paid for the period November 2009 to February 2010. The tenant says the rental unit was uninhabitable because of rats. The tenant says the landlord leaves tires and engines all over the rental property and this is what is attracting rats. Because of the rats the tenant also claims \$2,500.00 stating that the rat feces carry germs and the tenant says his family became infected. The tenant says his wife had to attend an eye specialist clinic four times, his son was infected on his legs and hands and he was infected on his belly.

Finally the tenant claims \$4,000.00 because he says he and his family had stored their belongings in the garage on the rental property. When they removed their belongings they discovered rat droppings and urine stains all over their clothing. The tenant says he had to discard 550 pieces of clothing.

The landlord says there are no rats. The landlord says that he has tenants in the other parts of the rental building and none of them have rats. The landlord claims \$5,000.00 because, he says, the rental unit was left dirty and because there was damage to the rental unit that required renovations. The landlord says he did the repair work himself. The landlord supplied photographs showing water stains on the countertops, dirt and debris behind the fridge, debris in the fridge, the dirty stove and fireplace that had not been cleaned.

Both parties agree that inspection reports were not prepared at move in or move out.

Analysis

The party bringing the claim has the burden of proving their claim. With respect to the tenant's claims, while he says he has documentary evidence to prove his claims no such evidence has been supplied with this Application. Based on the evidence that was supplied, that being the tenant's own testimony, I find he has failed to provide sufficient evidence to show that there were rats on the rental property and that those rats were on the property as a result of the landlord's actions or omissions. I therefore dismiss the tenant's claim for recovery of rent \$4,480.00 as claimed.

Having failed to prove that there were rats on the rental property, and even if he had proven that there were rats and that the rats were there due to the landlord's actions or omissions, I find that the tenant has failed to supply sufficient evidence to support his claim of \$2,500.00 for compensation for "illness" and "medicine fee".

Finally I find that the tenant has failed to supply sufficient evidence to show the loss of goods claimed or that the loss could be attributable to the landlord.

With respect to the tenant's claim for the return of double the security deposit, I prefer the testimony of the landlord. That is that the tenant agreed that the landlord could

retain the security deposit until the Terasen and Hydro billings arrived and then deduct the tenant's portion of those billings from the deposit and return the balance. I make this finding based on the tenant's statement in his claim agreeing that the landlord may deduct the hydro and gas bills. I find it is reasonable and probable that he made that same agreement with the landlord previously as stated by the landlord. Because I have found that the tenant agreed that the landlord could retain his deposit until the Terasen and Hydro costs could be ascertained, I dismiss the tenant's claim for the return of double the security deposit. The landlord has now made a claim to retain the security deposit, the parties agree that the tenant's share of the Terasen and Hydro billings is \$450.00 and I direct the landlord to deduct that sum from the security deposit he holds.

With respect to the landlord's claim for cleaning and the cost of repairs I find that the landlord has failed to supply sufficient evidence to demonstrate the cost of the repairs or that the repairs were required as a result of damage caused by the tenants. However, based on the photographs supplied by the landlord depicting the rental unit at move-out, I find that the landlord has provided sufficient evidence to show that the rental unit was not properly cleaned at move-out by the tenants. In this regard I award the landlord \$100.00 for cleaning.

In total I have made an award of \$550.00 to the landlord. With interest that security deposit is now valued at \$565.48. For expediency I direct the landlord to retain the deposit and interest in full satisfaction of the awards made herein including partial recovery of the \$50.00 filing fee. As the tenant has been unsuccessful in his claims, his claim for recovery of the \$50.00 filing fee is dismissed.