



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MND, MNC, FF

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 that were received within the time limit required under the Residential Tenancy Act.

The landlord claims to have faxed in some evidence yesterday January 27, 2011 however the Rules of Procedure required service as follows:

3.5 Evidence not filed with the Application for Dispute Resolution

a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent ***as soon as possible, and at least (5) days before the dispute resolution proceeding*** as those days are defined the “Definitions” part of the Rules of Procedure.-(***My highlighting***)

The landlord filed his application for dispute resolution on September 28, 2010, and therefore has had 4 months in which to supply his evidence. Therefore since the landlord did not supply his evidence as soon as possible and certainly not within five days before the dispute resolution proceedings, I will not consider the late evidence.

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

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Landlords application

The landlord's application is a request for a monetary order for \$2500.00 and a request that the tenants bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

Tenants application

The tenants application is a request for a monetary order for \$2775.00 and a request that the landlord bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

Background and Evidence

The landlord and landlords witness testified that:

- The rental unit was newly painted just prior to the tenants taking occupancy.
- The tenants did not ask for any permission to repaint the rental unit but went ahead and did so without permission.
- He is not happy with the pale blue color that the tenants chose to paint the rental unit, and therefore he had to repaint it back to the color of his choosing.
- The tenants also left the carpets in the sunroom badly damaged with urine, likely from their large dog, and with a very bad ammonia smell. The urine had seeped right through the carpet destroying the carpet, the underlay, and even soaking into the subfloor.
- As a result the carpet and underlay had to be removed, the subfloor sealed with paint, and new underlay and carpet installed.

- The tenants also removed a clothesline pole and it had to be replaced.
- The tenants also failed to remove a large amount of dog feces from the yard and as a result the yard had to be cleaned of dog feces.

The landlord is therefore requesting reimbursement of his costs as follows:

| | |
|-------------------------------------|-----------|
| Repainting the rental unit | \$1450.00 |
| Cleaning the yard of dog feces | \$150.00 |
| Cost of replacement carpet/underlay | \$594.70 |
| Filing fee | \$50.00 |
| Total | \$2594.70 |

The landlord is therefore requesting an order allowing him to keep the full security deposit of \$925.00 towards this claim and is requesting that a monetary order be issued for the difference.

The tenants testified that:

- They did repaint the rental unit because there were nicotine stains coming through the paint.
- They repainted the unit with a neutral white color, it was not pale blue.
- The carpet in the sunroom was not damaged by their dog, they believe it was likely damaged due to leaking that occurred in the sunroom. Whenever it rained water would drip from the rafters.
- They cleaned up all the dog feces in the yard before vacating and even mowed the lawn, which they obviously would not have been able to do had it been covered in dog feces.

The tenants are therefore requesting that the landlords claim be dismissed in full and are requesting an order as follows:

| | |
|--|----------|
| Return of security deposit | \$925.00 |
| Penalty for not returning deposits promptly, causing the tenants to go into debt | \$925.00 |
| Filing fee | \$50.00 |

| | |
|-------|-----------|
| Total | \$2825.00 |
|-------|-----------|

In response to the tenant's testimony the landlord testified that:

- There was no urine smell in the sunroom carpet prior to the tenancy and therefore the smell must have been caused by the tenant's dog.
- The sunroom was completely enclosed and he was never made aware of any leak in the sunroom.
- The tenants did not clean up all of dog feces, and although they may have mowed the lawn, there was still a big pile of dog feces piled under a tree and in the pond. It appeared they had been stockpiling it.
- The tenants are claiming for the return of a security deposit and a pet deposit; however the pet deposit was never paid. It was supposed to be paid in instalments but was not.

In response to the landlord's further testimony the tenants testified that:

- The smell was not a urine smell it was a musty smell likely caused by the leaking.
- They did pay a pet deposit, and have provided a receipt for that payment.

Analysis

The landlord claims to have had costs of \$2544.70 as a result of damages left by the tenants; however the landlord has not supplied any evidence of those costs within the time limit required under the rules of procedure.

The landlord claims to send evidence yesterday; however that evidence has not been provided to me for today's hearing, and as I stated earlier since the landlord did not comply with the service requirements for his evidence I am not willing to consider it.

Therefore in the absence of any evidence to support the amounts claimed I will not allow any of the landlords claim.

Since I have disallowed the landlord's full claim, I will allow the tenants claim for return of their security deposit, and their filing fee.

I will not allow the tenants claim for return of a pet deposit, because I am not convinced a pet deposit has been paid. The receipt supplied by the tenant's states on its face "pet deposit not paid will be paid by PR". Although the tenants claim to have paid the pet deposit on June 1, 2010 the tenants have supplied no evidence in support of that claim, other than the fact that \$925.00 has been written in beside the total, however that has been written in a different handwriting than the rest of the receipt and all other receipts, and therefore I am not convinced that it was written in by the landlord.

I also deny the tenants claim for a \$925.00 penalty. The landlord had the right under the Residential Tenancy Act to file a claim against the security deposit, and I will not penalize him for pursuing his right to file a claim.

Conclusion

Landlords claim

The landlords claim is dismissed in full without leave to reapply.

Tenants claim

I have allowed \$975.00 of the tenants claim. The remainder of the tenants claim is dismissed without leave to reapply.

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: January 28, 2011.

Residential Tenancy Branch