



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the unit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. The tenant testified that the month to month tenancy started on September 1st, 2007 and ended when she was served with a 2 Month Notice to End Tenancy effective December 1st, 2009. The landlord testified that he believed he had a written tenancy agreement, but that he could not recall when the tenancy started or ended. He stated that the rent of \$600.00 was payable on the first of each month. Condition inspection reports were not completed at the start or the end of the tenancy.

The landlord testified that he did not know when the tenant left after serving her with the notice to end tenancy. He stated that he went to the unit approximately 6 months later and found that the tenant left all her belongings behind. He stated that there was significant amount of garbage strewn inside and outside the unit, food in the fridge, broken kitchen floor tiles and dirty dishes in the sink. He stated that he could not recall the names of the two contractors he called for estimates, but that they both estimated that the repairs were over \$5000.00. The landlord stated that he could not afford it and that he will attempt to do the work himself. He stated that he took the tenant's items to the landfill approximately 6 months ago and that the dumping fee was approximately \$200.00. The landlord also claimed \$6600.00 for loss of rental income.

In his documentary evidence, the landlord submitted in part 13 faxed copies of illegible photographs of the rental unit. He stated that he also sent copies of the original through a government agent however these photographs were not before me at the time of this hearing.

The tenant testified that she left most of her belongings behind because they had accumulated a significant amount of mould. She stated that the unit was not insulated and it had a leaky roof that damaged her furniture. She also stated that she had trouble finding new accommodations on short notice, that she eventually found a small trailer already furnished and therefore she had no room for her belongings. She stated that the damages and several belongings were not hers' and that they were present at the start of the tenancy. In her documentary evidence, she provided in part 24 photographs to support her submissions concerning the pre-existing condition of the yard. She stated that she had no photographs showing inside the unit because she already had performed some repairs before getting a new film.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Sections 23(3), (4), and (5) of the Act place the onus to complete condition inspection reports on the landlord. The landlord's claim was not supported by these reports. I find that there is insufficient evidence to support that any of the damages went beyond what might be characterized as reasonable wear and tear.

Section 7(2) of the *Act* also states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The landlord served the tenant a 2 Month Notice to End Tenancy. Under section 49 of the Act the purpose of that notice is for the landlord's use of the property; however the landlord did not enter any evidence on this subject. Given that the tenancy ended December 1st 2009 and that the unit has not been repaired to date, I find insufficient evidence to make a finding concerning the landlord's claim of loss of rental income.

The tenant did not dispute leaving her belongings behind. Regardless of their condition, I find that the tenant was obligated to remove them from the unit at the end of the tenancy. The landlord stated that the dumping fee was approximately \$200.00 and I award him that claim.

Conclusion

The landlord established a claim of \$200.00. Since he was partially successful, he is entitled to a partial recovery of the filing fee and I award him \$50.00.

Pursuant to Section 67 of the Act, I grant the landlord a monetary order for \$250.00. This Order may be registered in the Small Claims Court 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: March 23, 2011.

Residential Tenancy Branch