



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes FF, OLC, RPP, MND, MNSD, MNR, 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.

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.

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.

The tenant's application is a request for an order for return of their personal property, and for recovery of the filing fee.

The landlords application is a request for a monetary order for \$2950.00 which includes recovery of the filing fee.

Background and Evidence

In early March 2011 during a domestic dispute the tenants caused extensive damage to the rental unit and as a result were removed by the police.

The door had been broken off and so the landlords replaced the door and then lock the unit up.

On March 7, 2011 the tenant contacted the landlord requesting the return of their personal belongings. The landlord had her sign an agreement to pay \$500.00 by March 11, 2011 for return of her items, with the agreement that she would have all her belongings out of the rental unit by March 13, 2011, and would agree to pay for the damages on a payment plan.

The tenant does not dispute that they caused extensive damage to the rental unit however she is asking for the return of her personal property, and recovery of her filing fee.

The landlord is asking for an order for the estimated cost of the repairs to the rental unit, plus an order for rent outstanding for the month of March 2011 and for two more months rent to allow time to do the repairs to the rental unit.

The total amount claimed by the landlords is as follows:

Estimated cost of repairing damages	\$1500.00
Expected lost rental revenue for April 2011	\$600.00
Expected lost rental revenue for May 2011	\$600.00
Filing fee	\$50.00
Total	\$2950.00

The landlord further requests an order allowing them to keep the full security deposit of \$300.00 towards this claim and requested a monetary order be issued for the balance.

Analysis

Tenant's application

It is my decision that the landlords do not have the right to require payment for the tenant's belongings before returning them.

Section 26(3) of the residential tenancy act states:

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

Therefore it is my decision that the landlords must return the tenant's personal belongings as soon as possible and I have issued an order requiring them to do so.

I also allow the tenants claim for recovery of her filing fee.

Landlord's application

The tenant stated at the hearing that she does not dispute the landlords claim for the damages and therefore I will allow that portion of the claim.

The tenant stated that she does not believe she should have to pay rent as she was not allowed back into the rental unit, however since there is such extensive amount of damage to the rental unit it is also my decision that I will allow the landlords claim for rent to the end of April 2011 as I find it unlikely that the rental unit will be repaired before that date.

Further it is my finding that it was reasonable for the landlords to not allow the tenants back into the rental unit, because the rental unit was so extensively damaged as to make it uninhabitable.

I will not allow the claim for rent for the month of May 2011 however, because the landlords are required to attempt to mitigate any loss by doing the repairs as soon as possible.

I also order recovery of the landlords filing fee

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Damages	\$1500.00
Expected lost rental revenue for April 2011	\$600.00
Filing fee	\$50.00
Total	\$2350.00

Conclusion

Tenant's application

I have issued an order for return of the tenant's personal belongings.

I also order recovery of the tenant's \$50.00 filing fee

Landlords application

I have allowed \$2350.00 of the landlords claim. I therefore set off the \$50.00 filing fee I awarded to the tenants in their application, leaving in the amount of \$2300.00. I therefore order that the landlord may retain the full security deposit of \$300.00, and have issued a monetary order in the amount of \$2000.00

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 31, 2011.

Residential Tenancy Branch