



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution for a monetary Order for damages to the rental unit; for a monetary Order for money owed or compensation for damage or loss; and to recover the fee from the Tenant for filing this Application for Dispute Resolution.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on December 10, 2010, the Tenant did not appear. The Landlords provided a copy of the registered mail receipt, testified that the mail was sent to the address at which the Tenant resided and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the Tenant's absence.

The Landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief and recovery of the filing fee?

Background and Evidence

The Landlords' testimony indicated that this month to month tenancy started June 23, 2009, and ended on October 8, 2009, monthly rent was \$2,500.00, and the security deposit has been returned to the Tenant. The rental unit was a fully furnished house.

The Landlords' monetary claim is as follows:

Missing Items	\$352.00
Damaged and Broken Items	\$800.00
Cleaning (30 hrs @ \$15/hr)	\$450.00
Replacement of Goods	\$250.00
Filing fee	\$50.00
NSF fee	\$15.00
Total	\$1,917.00

The evidence submitted by the Landlords was a breakdown of the monetary claim in their application, a statement from a neighbour verifying the address of the Tenant at the time the hearing documents were served, registered mail receipts and photographs of the rental unit.

In support of their application, I heard testimony from the Landlords that the Tenant left the rental unit in a condition which required extensive cleaning, at least 30 hours, and that a reasonable rate for cleaning based upon an estimate from a cleaning company was \$15.00 per hour.

The Landlords submitted that the Tenant used certain household items she was told and agreed not to use, which resulted in breakage and damage. The Landlords testified that the Tenant agreed to these terms in the tenancy agreement, but I note the tenancy agreement was not submitted into evidence.

The Landlords submitted that the Tenant damaged furniture, which either had to be repaired or replaced. The Landlords admitted that two of the items of furniture were at least 40 years old.

The Landlords submitted that the Tenant did not replace the goods she used from the kitchen, even though she agreed to do the same. I note the Landlords did not submit a copy of the tenancy agreement which purportedly contained this agreement.

Upon query, the Landlords admitted that they did not have a written move in or move out condition inspection report.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 67 of the Act. In order to be successful in obtaining an award for compensation such as damages, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicants/Landlords must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a move in or move out condition inspection report, I find the Landlords have not sufficiently proven the condition of the rental unit before the tenancy began and are thereby unable to meet steps 1 and 2 of their burden of proof. Additionally in the absence of a tenancy agreement and addendum, I find the Landlords have submitted insufficient proof that the Tenant was to replace any goods she may have used. I therefore **dismiss** the Landlord's claim for missing items, damaged or broken items, and replacement of goods in the amount of **\$1,402.00**.

Alternatively, had I found that the Landlords did meet steps 1 and 2 of their burden of proof, I would still dismiss their claim for insufficient evidence of the value of the loss, which is step 3.

As to the cleaning, Section 37 of the Act states that a tenant must leave the rental unit reasonably clean. In the absence of the Tenant's testimony or evidence, I accept the photographic evidence and testimony of the Landlord that the Tenant did not clean the rental unit and that the rental unit required cleaning. However, without the condition inspection report, I am unable to make a determination that the cleaning required 30 hours. I find that a reasonable amount of cleaning time would be 15 hours at \$15.00 per hour and I **award** the Landlords a monetary claim of **\$225.00**.

The Landlords did not submit proof of a NSF charge and I therefore dismiss their claim for \$15.00.

The Landlords were partially successful with their application and I therefore **award** them a partial filing fee in the amount of **\$25.00**.

Conclusion

I find the Landlords have established a total monetary claim in the amount of **\$250.00**, comprised of cleaning fees of \$225.00 and \$25.00 for a partial filing fee.

I grant the Landlords an order under section 67 of the Act in the amount of \$250.00.

This order may be filed in the Provincial Court (Small Claims) 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: April 15, 2011.

Residential Tenancy Branch