



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for a monetary Order for money owed or compensation for damage or loss and to recover the fee from the Tenants for filing this Application for Dispute Resolution.

All parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Have the Tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlord to an Order for monetary relief and recovery of the filing fee?

Background and Evidence

The parties were previously in dispute resolution, resulting in a Decision by the Residential Tenancy Branch awarding the Tenants a monetary order for \$850.00, less the amount of \$183.25, which the Landlord returned to the Tenants after her deductions.

In the present dispute, the Landlord is claiming as follows:

Carpet cleaning	\$101.75
Stove and fridge cleaning	\$60.00
New locks	\$55.95
Short payment for Dec. Rent	\$174.94
½ security deposit returned to Tenant QS	\$91.62
½ security deposit returned to Tenant CB	\$91.62
Paint	\$120.80
Filing fee	\$50.00
Canada Post registered mail fees	\$43.10
TOTAL	798.78

The Landlord submitted into evidence a receipt from a carpet cleaning company, a statement from the subsequent tenants acknowledging the Landlord's allowance of a deduction of \$60.00 from their rent for stove and fridge cleaning, a locksmith receipt, and receipts for paint.

In support of her application, the Landlord acknowledged a breakdown in communication with the Tenants, which led to the tenancy's end. The Landlord stated that the Tenants did not clean or vacuum the carpet, and had not wiped out the refrigerator or stove upon their vacancy.

The Landlord further submitted that the Tenants did return a key, but it was not to the rental unit, which required a change in locks.

The Landlord submitted that for the December 2009 rent, she received the amount of \$625.06 and the Tenants' receipt for paint, instead of the rental amount of \$850.00. Upon query, the Landlord stated that the Tenants paid the rent in cash, but were not issued a receipt.

The Landlord stated that it was necessary to repaint the rental unit after the Tenants moved out due to the painting which the Tenants had done.

The Landlord acknowledged that there is no written tenancy agreement or a move in or move out condition inspection report.

The Landlord acknowledged that she had not paid the monetary order which was issued against her on November 22, 2010, and was applying for a refund of the partial payment of the security deposit she has already returned, which was addressed in that Decision. The Landlord submitted that the Decision wasn't fair and that she has incurred more costs than the security deposit.

In response the Tenants submitted that they had verbally agreed with the Landlord to move out on March 1, 2010, but that the Landlord subsequently demanded the Tenants move out early. The Tenants stated that the Landlord became hostile and they were afraid to stay until March 1, 2010, and therefore they did not have a chance to vacuum the carpet or wipe the refrigerator or stove.

The Tenants stated that they did return a working key to the front door and the garage door opener.

The Tenants submitted that they had an agreement with the Landlord's husband concerning the painting and the December rent reduction.

The Tenants' witness stated that she attended the end of the tenancy and that the Tenants were distressed due to the Landlord's treatment. The witness testified that the Landlord made it so uncomfortable that the Tenants had to leave earlier than agreed, with no chance to clean. The witness confirmed the return of the keys by the Tenants.

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.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlord to prove 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 Landlord has not sufficiently proven the condition of the rental unit before the tenancy began and is thereby unable to meet steps 1 and 2 of her burden of proof. Therefore I **dismiss** the Landlord's claim for paint, carpet cleaning and stove and refrigerator cleaning.

Additionally in the absence of a rent receipt, I find the Landlord has submitted insufficient proof of the amount of rent the Tenants paid in December 2009. I therefore **dismiss** the Landlord's claim for a December rent shortfall.

As to the Landlord's claim for a return of her partial refund of the security deposit, the matter was addressed in the previously referred to November 22, 2010, Decision.

The principle of res judicata prevents a party from bringing to litigation a matter that was previously heard and decided upon. I am bound by this earlier Decision, under this legal principle, and I **dismiss** the Landlord's claim for the return of her refund of the security deposit.

The Tenants testified that they returned the rental unit keys and the garage door opener to the Landlord, which was verified by their witness. I accept this testimony as I found the Tenants' testimony to be credible and that the Landlord's testimony lacked

credibility. Additionally disputed verbal testimony does not sufficiently meet the burden of proof. I therefore **dismiss** the Landlord's claim for a locksmith charge.

Finally, to the Landlord's claim for the registered letter costs for the provision of notice of this hearing to the Tenants, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore **dismiss** the Landlord's claim for registered mail expenses.

Due to the above, I **dismiss** the Landlord's Application, in its entirety, without leave to reapply.

As I have dismissed the Landlord's Application, I decline to award the filing fee.

Conclusion

The Landlord's Application is dismissed, in its entirety, 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: April 29, 2011.

Residential Tenancy Branch