



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MNDC, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on December 08, 2010. The tenant confirmed receipt of the hearing documents. The landlord confirmed receipt of the tenants' evidence.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on April 01, 2008 and ended on November 27, 2010. Rent for this unit was \$950.00 per month. The tenant paid a security deposit of \$475.00 on April 01, 2008. No Move in or Move out condition inspection reports were

completed by the landlord but both parties agree a walkthrough of the rental unit was done at the end of the tenancy. This was a verbal tenancy agreement.

The landlord testifies that the tenant caused damage to the walls of the unit and left picture nails in the walls which he had to remove, fill, sand and then repaint the walls. The landlord states the tenant did not clean the unit thoroughly at the end of the tenancy. The stove was not cleaned and the bathroom was left unclean. The landlord seeks to recover \$1,275.00 for painting and cleaning the unit. The landlord has provided no documentary evidence.

The tenant disputes the landlords' claims she states the unit was cleaned at the end of the tenancy including the bathroom and stove. There was one small hole left in a kitchen wall (photographic provided) and she states they did hang pictures on the walls in the unit and states her and her husband disagreed with the landlord at the move out walkthrough that they were responsible to fill these holes. The tenant has provided written statements and photographic evidence showing the good, clean condition of the unit at the end of the tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for cleaning and damage to the walls; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide

evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation for damage or loss does not meet any of the components of the above test. The landlord has not submitted any evidence to support his claim of \$1,275.00 to show that the tenants did not clean all the unit or caused damage to the walls of the unit.

I also refer the Parties to the Residential tenancy Policy Guidelines #1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property. It states that most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

As the landlord did not put anything in writing to the tenants at the start of their tenancy concerning the use of picture nails the tenant is therefore not responsible for repairing the walls at the end of the tenancy.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply. As the landlord has been unsuccessful he must bear the cost of filing his own application.

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 14, 2011.

Residential Tenancy Branch