



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only. The tenant did not attend.

The landlord's agent testified the tenant provided his forwarding address on March 15, 2011 and that he was served with notice of this hearing via registered mail to this address on March 16, 2011. Based on the agent's testimony, I am satisfied the tenant has been served sufficiently with notice of this hearing.

Further the agent testified that she last spoke with the tenant on April 28, 2011 at which point he indicated he would be moving again to a new address but that he would not provide the agent with his new address.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and removal of furnishings provided by the landlord; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The agent testified the tenancy began on July 15, 2008 as a month to month tenancy for a monthly rent of \$375.00 at the end of the tenancy and that a security deposit of \$400.00 was paid.

The agent testified that at the end of the tenancy the landlord had to complete repairs to the rental unit ceiling and clean the rental unit. The agent further stated the tenant had been provided with a bed and silverware; dishes; and kitchen utensils at the start of the tenancy but that none of these items remained in the rental unit after the tenant vacated the rental unit.

The agent did testify that the tenant had been offered opportunities to complete a move out inspection and that a move in inspection had been completed including signed acknowledgment from the tenant of what furniture and kitchen equipment was provided at the start of the tenancy. The landlord provided no documentary evidence of the condition of the rental unit or its contents at the start or end of the tenancy.

Analysis

To be successful in a claim for damage or loss the party making that claim must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss;
4. The steps taken, if any, to mitigate the loss or damage.

I find the landlord has failed to provide any evidence to substantiate that a loss or damage exists; that if loss or damage exists that it resulted from a violation of the *Act*, regulation or tenancy agreement; a value of any damage or loss sustained or that any steps were taken to mitigate any loss or damage.

Section 38(1) states that a landlord must, within 15 days of the end of the tenancy and receipt of the tenants forwarding address, return the tenant's security deposit or file an application to claim against the deposit. Section 38(6) requires a landlord who fails to comply with Section 38(1) to pay the tenant double.

I find also that despite the tenant providing the landlord with a forwarding address on March 15, 2011 and since the landlord's Application for Dispute Resolution to retain the security deposit was filed on March 15, 2011, the landlord has complied with the requirements of Section 38(1).

Section 39 states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished.

I find that despite the tenant providing the landlord with one forwarding address on March 15, 2011 and subsequently advising the landlord that he is moving again without providing the landlord with his new forwarding address the landlord is not obligated to return the security deposit held until such time as the tenant provides the landlord with his new forwarding address, in accordance with Section 39 of the *Act*.

Conclusion

For the reasons noted above, I dismiss the landlord's application 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: June 29, 2011.

Residential Tenancy Branch