



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord Commission attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 9, 2011, and again personally on April 12, 2011, the tenant did not attend the hearing. The landlord's agent provided proof of the mailing by registered mail in advance of the hearing. The *Residential Tenancy Act* states that the applicant must serve the respondent with the application and notice of hearing documents within 3 days of making the application, and registered mail is a method provided for in the *Act*. Therefore, I find that the tenant has been served within the time required and in a method provided, and the tenant is deemed to have been served 5 days after mailing the documents, or on March 14, 2011.

All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2005, and the tenant still resides in the rental unit. Rent in the amount of \$441.00 per month

is payable in advance on the 1st day of each month, and there are no rental arrears. No security deposit or pet damage deposit was collected by the landlord.

The landlord's agent further testified that the tenant had damaged a door in the rental unit, but was unable to provide any description of such damage or any cause. The landlord has provided a letter dated May 11, 2010 addressed to the tenant from the landlord which states that an invoice is attached for the cost to repair the front door in the amount of \$433.13 and a Chargeback Agreement, and requests that the tenant sign the agreement and return it with a \$50.00 payment. Also provided is an invoice in the amount of \$433.13 and a Chargeback Agreement signed by the tenant that states the tenant will pay the sum of \$523.13, which the landlord's agent testified includes \$40.00 in N.S.F. fees for 2 rent cheques issued by the tenant in 2010. The agreement provides payment at the rate of \$50.00 per month for ten months with a final payment in the eleventh month of \$23.13, and that payments are to commence on May 20, 2010, in addition to the monthly rental payments.

The landlord's agent testified that the tenant made some payments toward that debt, in the amount of \$20.00, \$9.00 and two payments of \$50.00. When questioned about the arithmetic, the landlord's agent stated that the tenant would have been in arrears of rent.

The landlord has also provided a copy of a tenancy agreement which states that returned cheques are subject to an N.S.F. fee of \$20.00 each. Also provided is a Tenant Statement which runs from February, 2010 to September, 2010. That document shows that the tenant held a credit balance throughout that time, and the charges for the landlord's claim of \$50.00 per month as well as the N.S.F fees are also contained in the Statement. The credit balance at the end of September, 2010 is \$220.00, being an overpayment by the tenant.

The landlord's agent was disconnected from the conference call hearing after providing the testimony, and I remained on the line for 15 minutes awaiting her return. The landlord's agent did not return and the call was ended, however, I am satisfied that the testimony was completed.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to prove a 4-part test for damages:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act*, regulation or tenancy agreement;
3. the amount of such damage or loss;
4. what efforts the claiming party made to mitigate such damage or loss.

In this case, I am satisfied that the landlord has established element 3, but has not established elements 1 or 2. I have no evidence before me of the damage claimed by the landlord or any evidence that the damage was caused by the tenant, other than an agreement for a debt that is not described in that agreement.

Further, I have reviewed the Tenant Statement, and the \$50.00 per month payment that the tenant signed the agreement for is contained in the statement, thus showing that the tenant has made 5 payments toward it at \$50.00 each, contrary to the testimony of the landlord's agent. Further, the 2 NSF fees charged by the landlord in February and March, 2011 are also contained in that statement, which means the tenant has already paid for those fees and as at September, 2010 the tenant was still in a credit balance of \$220.00.

Further, the invoice is in the amount of \$443.13 and \$40.00 for 2 N.S.F. cheques would bring the balance owing to \$483.13. The landlord's agent was not able to provide any information about any arrears for prior months, and testified at the outset of the hearing that there are no rental arrears.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: June 20, 2011.

Residential Tenancy Branch