



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, 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 and the tenant.

During the hearing the tenant confirmed that she had received the landlord's evidence in sufficient time to prepare for this hearing and the landlord testified that he had submitted his evidence to the Residential Tenancy Branch (RTB), however the landlord's evidence was not on file.

As both parties to the dispute could rely upon and provide evidence and testimony regarding the landlord's evidence I requested the landlord submit his evidence to the RTB within 2 business days of the close of the hearing. The landlord submitted this evidence on July 4, 2011.

In addition, during the hearing the landlord testified that the tenant had signed a Form K, as the rental unit is part of a condominium complex, but the tenant disputes ever seeing any of the complex bylaws or signing a Form K. The landlord testified during the hearing that he could not find the Form K.

Despite requesting a copy of the landlord's evidence, I advised the landlord that because the tenant disputes ever signing a Form K I would not accept a copy after the hearing from the landlord as the tenant would not have an opportunity to review and provide any testimony regarding the form.

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; for loss or damage; 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 23, 24, 35, 36, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on March 1, 2010 as a 1 year fixed term tenancy that converted to a month to month tenancy on February 28, 2011 for a monthly rent of \$1,025.00 due on the 1st of each month and that a security deposit of \$512.50 and a pet damage deposit of \$256.25 were paid.

The tenant submitted a written summary of issues and events and several emails and text messages between the two parties towards the end of the tenancy.

The parties agreed that at the start of the tenancy they completed a move in condition inspection but the landlord never provided a copy of a written move in inspection report to the tenant. The parties agreed that the tenant did not participate in the move out inspection that was completed after the tenancy ended.

The landlord's claim is broken down as follows: repairs - \$300.00 and two parking violations from the strata totalling \$200.00.

The tenant agrees with the landlord that there was a hole in the wall and black stain marks on the wall of the den but she states that these items were in this condition at the start of tenancy. The tenant provided a written witness statement confirming the tenant's assertion.

As to the landlord's claim for repairs to holes in the walls for hanging curtains, the tenant attributes the holes in the bedroom and den to normal wear and tear and should not be considered damage to the rental unit.

The tenant agrees she received a letter from the strata stating that she was being fined for not waiting for the garage door to close, but that she had not received a warning letter or even a copy of the bylaws to know that she was committing a finable offence. The landlord acknowledges that he tried to have the fines overturned but he was unsuccessful.

Analysis

Section 23 of the *Act* requires the landlord and tenant to inspect the condition of the rental unit at the start of a tenancy and subsequently the landlord is required to provide a written condition inspection report. Section 24 stipulates that if either party fails to comply with Section 23 that party then extinguishes their right to the security and pet damage deposits and if it is the landlord who fails to comply he cannot claim against those deposits for damage to the rental unit.

As per the agreement of both parties, I accept the landlord failed to comply with Section 23 of the *Act* and cannot therefore claim against the security deposit for damages to the rental unit, however this does not preclude the landlord for making an application for compensation for damage to the rental unit or other losses he may have suffered.

To be successful in a claim for damage or loss, the party making the claim has the burden to provide sufficient evidence to establish the following 4 points:

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

While the parties agree with the condition of the rental unit at the end of the tenancy the tenant contends that some of the damage (repaired hole and stained wall) was there at the start of the tenancy and in the absence of a documented move-in condition inspection report, I find the landlord has failed to establish this damage results from a violation of the *Act*, regulation or tenancy agreement.

Residential Tenancy Policy Guideline #1 provides the landlord the ability to set rules on hanging items on the wall. It goes on to state "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."

In relation to the holes the tenant acknowledges they result from hanging curtains, I accept there were no restrictions in the tenancy agreement that prevented or provided rules to the tenant regarding hanging curtains. As a result, I find the Residential Tenancy Policy Guideline #1 regarding responsibility for walls and repairs germane to this matter.

For these reasons, I find the landlord has failed to establish the damage results from a violation of the *Act*, regulation or tenancy agreement.

As to the landlord's claim regarding strata fines, while I note the tenant agrees that she received a letter citing two infractions and in the absence of any confirmation provided by the landlord, I find the landlord has failed to establish the tenant was sufficiently aware of the complex bylaws to find her responsible for payment of any fines related to the tenancy required by the strata.

Even if I were to accept any damage or loss resulted from this tenancy, the landlord has failed to provide any evidence to the value of repairs required and has therefore also failed to establish the value of any of the damage or loss related to damage to the unit.

Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety.

I find the tenant is entitled to the return of her security and pet damage deposits in full pursuant to Section 67 in the amount of \$768.75 comprised of \$512.50 security deposit and \$256.25 pet damage deposit.

I grant a monetary order in the amount of \$768.75. This order must be served on the landlord. If the landlord fails comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: July 05, 2011.

Residential Tenancy Branch