



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the cost of rebuilding a snow roof that was destroyed by the accumulation of snow, for the cost of clearing the debris that was associated with the collapse of the snow roof and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

This application was initially heard on July 13, 2011 and adjourned to this date. The tenant did not attend the original hearing. The reason for the adjournment was that the evidence that was filed by the landlord was not before me. In addition, the adjournment would provide the landlord with an opportunity to file updated information from the insurance company.

Both parties attended the adjourned hearing on this date and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on November 09, 2010. The monthly rent was \$750.00 and prior to moving in the tenant paid a security deposit of \$387.50. The tenant was out of town for about two weeks when he received a phone call from the landlord on March 15, 2011. The landlord informed him that the snow roof had collapsed and asked the tenant not to return to the rental unit.

On April 14, 2011, the tenant gave the landlord his forwarding address. On April 21, 2011, the landlord made this application. During the hearing, the landlord testified that he had been awarded \$31,500.00 from the insurance company. I requested the landlord to file a copy of the award in order to determine the landlord's eligibility for additional compensation in the event that I found the tenant liable for the damage.

The landlord stated that he was tired of the whole process as this hearing had already been adjourned to this date. The landlord then said “*have a good day*” and hung up the phone thereby leaving the hearing by conference call.

After the landlord left the hearing, the tenant asked about the return of his security deposit. He stated that the landlord had promised to return the security deposit along with rent for the period of March 15 – 30, during which the tenant was denied access to the rental unit.

Analysis

The landlord applied for a monetary order for compensation but did not provide adequate documentary evidence to support his claim. In addition the landlord removed himself from the hearing while it was in session. Therefore the landlord’s application is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord’s application to retain all or part of the security deposit, or
 - a tenant’s application for the return of the deposit unless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant’s security deposit with interest; I so order and I grant the tenant a monetary order in the amount of \$387.50 (plus \$0.00 interest). This order may be registered in the Small Claims Court and enforced as an order of that court.

The tenant is at liberty to make application for a monetary order for the portion of his rent that he stated is owed to him by the landlord.

Conclusion

I grant the tenant a monetary order in the amount of \$387.50.

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: August 11, 2011.

Residential Tenancy Branch