



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, MNSD, MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for utilities and damages and reimbursement of the \$50.00 filing fee. The hearing was also convened to deal with an application by the tenant for the return of the security deposit under the Act in addition to the \$50.00 fee paid by the tenant for this application.

The landlord appeared. However, the tenant did not appear to present her cross-application or defend against the landlord's claim, despite being served with the application by courier.

Issues to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to be compensated for damages and to retain the security deposit in partial satisfaction of the claim.

Background and Evidence

The landlord testified that the tenancy began on April 1, 2010 with rent set at \$1,300.00 per month and that a security deposit was paid in the amount of \$650.00. The landlord testified that, although no move-in condition inspection report was completed, the unit was brand new when the tenant moved in. The landlord testified that there was no written tenancy agreement but the verbal tenancy agreement included a term that required the tenant to pay for half the utilities. The landlord testified that the tenant vacated the unit on March 31, 2011 and left owing \$130.45 for hydro, which is being claimed. The landlord testified that no move-out inspection report was completed as the tenant was distraught when the landlord and tenant did the final walk through.

The landlord testified that the unit was left in a damaged state requiring re-painting at a cost of \$537.60 and new blinds costing \$440.00. The landlord submitted photos of damage to the floor, blinds and stove and a copy of a receipts for the painting and an estimate for the cost of new blinds.

Analysis:

In regard to the landlord's claim for hydro charges, based on communications from the tenant in evidence, I accept the landlord's testimony that the tenant had agreed to pay her share of the hydro under the tenancy agreement and that the final bill was not paid. Accordingly, I find that the landlord is entitled to be reimbursed \$130.45 for utility costs.

With respect to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 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, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

With regard to the claim for damage to the walls that required repainting, I find that the evidence of this damage consisted of the landlord's verbal testimony and a copy of an invoice showing that the unit was painted.

Both section 23(3) of the Act dealing with move-in inspections and section 35 of the Act for the move-out inspections state that the landlord must jointly do these inspections with the tenant and both parties must complete and sign the forms.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. That being said, I do accept the landlord's testimony that the unit was brand new when the tenancy began. However I find the failure to comply with section 35 of the Act by completing the move out inspection report has hindered the landlord's ability to establish that sufficient damage was caused to the walls to necessitate repainting. Therefore I find that element 1 of the test for damages has not been satisfied and the claim for repainting costs of \$537.60 must be dismissed.

I find that the landlord's claim with respect to the blinds satisfies elements one and two of the test for damages, as verified by the photo. I find that, although the landlord submitted an estimate to replace these damaged blinds, no purchase has been made after the tenancy terminated on March 31, 2011. I find that the landlord has not proven that a financial loss was incurred to satisfy element 3 of the test for damages. Therefore the claim for \$440.00 must be dismissed.

The landlord is entitled to total compensation of \$180.45, comprised of \$130.45 for hydro and the \$50.00 cost of this application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to retain \$180.45 from the tenant's \$650.00 security deposit, leaving \$469.55 still held in trust for the tenant. The remainder of the landlord's application is dismissed.

Pursuant to section 38 of the Act, I hereby grant the tenant a monetary order for \$469.00. This order must be served on the landlord and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and 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: August 12, 2011.

Residential Tenancy Branch