

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for unpaid utilities, damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

During the hearing, both parties acknowledged receipt of the evidence package filed by the other. The Landlord later stated that she did not receive the written submissions from the Tenant, "Details of the Defendants Rebuttal." I find that no bias has occurred against the Landlord in these submissions and the hearing can proceed.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on August 1, 2010 on a fixed term tenancy until June 1, 2011 as shown in the submitted signed copy of the tenancy agreement. The monthly rent was \$1,200.00 plus 50% of the utilities. A security deposit of \$900.00 was paid. The Landlord returned \$400.00 of the security deposit and currently holds in trust \$500.00.

The Landlord claims that the Tenant over-held the rental unit until June 2, 2011 and is seeking \$40.00. The Landlord states that the Tenant's did not clear all of their items/garbage until June 19, 2011 and did not clean the unit. The Tenant disputes this stating that they confirmed with the Landlord that no new Tenants would be moving in on June 1, 2011 and that they could complete the move-out on June 1, 2011. The Tenant also states that they gained permission from the Landlord to leave some items behind to be collected at a future date. The Landlord stated in her direct testimony that no showings for the rental unit were made and has not provided any evidence of re-renting the unit.

The Landlord is seeking to claim damages for \$34.71 for a broken mirror, a wall mounted counter top for \$55.99, a broken fridge railing estimated for \$67.20 to \$112.00, ceiling tiles replacement for \$10.95, a broken latch for \$56.00, cleaning for \$100.00 and unpaid utilities totalling, \$326.74. The Landlord relies on an incomplete condition inspection report and photographic evidence. The Landlord states that none of the broken items have been replaced. The Landlord has provided copies of the utilities bills from Hydro and Fortis. The Tenant disputes the utilities stating that the previous months bill was paid and not subtracted from the amount owing. The Tenant has not provided any proof of payment. The Tenant further states that a verbal agreement was made to cap the utilities at \$100.00 per month. The Landlord disputes that no such agreement was made. The Tenant does not have any evidence to support that an agreement was made.

Analysis

As both parties have attended the hearing by conference call and have made detailed references to the evidence submitted, I am satisfied that Tenant has been properly served with the notice of hearing package and that each has been properly served with the evidence submitted.

The Landlord's claims for damages of a broken mirror for \$34.71, a wall mounted counter top for \$55.99, a broken fridge railing costing between \$67.20 to \$112.00, ceiling tiles for \$10.95, a broken latch for \$56.00, cleaning costs for \$100.00 has failed. The Landlord relies on an incomplete condition inspection report which gives no indication of what conditions were before or after the tenancy. The photographic evidence submitted offers no conclusive evidence of damage. Further the Landlord has suffered no loss or expense as she stated in direct testimony that none of the claims of repair/replacement have been made. These portions of the Landlord's claims are dismissed.

The Landlord's claim of \$40.00 for over-holding has been established. Although the Tenant states that permission was granted, they have offered no proof of such an agreement existed. This portion of the Landlord's claim is granted.

I find based upon the evidence submitted and the direct testimony of both parties that the Landlord has established a claim for utility costs of \$326.74. The Tenant has provided no evidence of an agreement to cap utilities or of payment of any. This portion of the Landlord's claim is granted.

I find that the Landlord is entitled to recovery of the \$50.00 filing fee. The Landlord has established a total monetary claim for \$416.74. I order that the Landlord retain the \$416.74 from the \$500.00 security deposit held in trust in satisfaction of the claim. The Tenant is granted a monetary order for \$83.26. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord may retain \$416.74 from the \$500.00 security deposit.
The Tenant is granted a monetary order for \$83.26.

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: September 29, 2011.

Residential Tenancy Branch