



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and damage to the rental unit, and to recover the filing fee for the Application.

The Tenant and an Agent for the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the parties explained that the Tenant had already vacated the rental unit. Therefore, the order of possession was no longer required.

Issue(s) to be Decided

Is the Landlord entitled to rent money from the Tenant?

Is the Landlord entitled to monetary compensation from the Tenant for damages to the rental unit?

Background and Evidence

This tenancy apparently began in October of 2007 and ended sometime in May of 2010.

The Agent for the Landlord testified that the Landlord and the Tenant entered into a tenancy contract, partly verbal and partly written (in the form of facsimiles), that held the Tenant would renovate the rental unit property in exchange for rent. The Landlord asserts that the Tenant did not complete the renovations and now requests a monetary order for the unpaid rent in the amount of \$5,600.00. This is for rent allegedly owed for September, October, November and December of 2009, and for April, May and June of 2010.

The Landlord's Agent testified that the Landlord had excused some of the rent during the tenancy for work performed by the Tenant and for three months when the Tenant was in school.

The Landlord's position is that the Tenant did not perform work sufficient to offset these amounts.

The Landlord also claims \$200.00 for damage to a leather couch by the Tenant's cat, \$100.00 for repairs to a gate and fence, \$20.00 for window screens, \$100.00 for a deck railing, \$60.00 for cleaning the rental unit, \$80.00 for portable heaters, \$20.00 for a bathroom mirror, \$100.00 for missing curtains and rods and \$100.00 to remove items left behind by the Tenant.

Aside from a list of her monetary claims, the Landlord did not provide any documents in evidence to support her claims.

I note that the Landlord is holding a security deposit of \$400.00 paid by the Tenant on October 5, 2007, although the Landlord has not claimed against this deposit in her Application.

In reply, the Tenant testified that the agreement for this work was verbal and solely with the Landlord. He testified he signed a document with the Landlord at the outset of the tenancy, but he had received no copy of it and does not recall exactly what it was.

The Tenant testified that he agrees that six months of rent is due, however, the Tenant submits and testified that he has performed work sufficient to offset the Landlord's claims for rent which he has not been compensated for.

The Tenant testified and submitted evidence that he made up plans for the renovations at the rental unit, however, the Landlord refused to apply for a zoning variance required for her proposed work. The Tenant also testified that the Landlord requested a blank floor plan as she did not want to seek rezoning for a secondary suite from the municipality where the rental unit is located. The Tenant testified he spent many hours over several months working for the benefit of the Landlord, however, she refused to apply for the necessary permits, rezoning and variations required for the proposed work. Therefore, much the requested work could not be performed.

The Tenant testified he did construct a small work shed on the property and performed other work for the benefit of the Landlord.

The Tenant agreed his cat did damage the couch and that the rental unit was a bit dirty when he left. He testified that the heaters had already been returned. He testified that some of the property left behind (a boat motor) was a wedding present for a third party.

The Tenant denies the Landlord's claims for repairs to a gate and fence, for window screens, for a deck railing, for a bathroom mirror, and for missing curtains and rods.

The Tenant submitted that the agreement was between himself and the Landlord, and that the Agent for the Landlord had little to do with the tenancy or the work to be performed.

The Agent for the Landlord agreed she was not present for the contractual discussions between the Landlord and the Tenant.

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenant has breached section 37 of the Act, by failing to repair the damages caused by his cat and by failing to clean the rental unit before vacating. I allow the Landlord **\$260.00** in compensation for these claims.

I dismiss all other claims made by the Landlord without leave to reapply, for the following reasons.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the Landlord and the Tenant intermingled a contract for work and a tenancy agreement. I find the Landlord failed to prove what the terms of this contract or agreement was, or that the Tenant was in breach of a contract or agreement. In the absence of the Landlord's direct testimony regarding the contract or agreement, I must accept the testimony and evidence of the Tenant as to the terms of the contract and agreement.

Without the direct testimony of the Landlord, I find that she has failed to prove she suffered a loss or that the Tenant had breached an agreement to do work in exchange for rent. I am satisfied by the testimony and evidence of the Tenant that the work he performed was sufficient to offset any rent payable to the Landlord.

I also find that by failing to make an Application to keep the security deposit, the Landlord must now pay the Tenant double the security deposit, plus the interest, pursuant to section 38 of the Act.

The security deposit was held in trust for the Tenant by the Landlord. At no time did the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlord did not even apply to keep any portion of the security deposit. Therefore, I find that the Landlord must pay the Tenant double the original security deposit amount, subject to the offset described below.

I find that the Landlord has established a total monetary claim of **\$270.00** comprised of \$200.00 for the damage to the couch, \$60.00 for cleaning the rental unit and \$10.00 towards the fee paid for this application. As the Landlord has had limited success, I only award her a limited amount of the filing fee for the Application.

I find the Landlord owes the Tenant the sum of **\$807.47**, comprised of double the security deposit of \$400.00 and \$7.47 for interest accrued on the original amount paid to the Landlord.

Pursuant to the offset provisions of the Act, I order that the Landlord may retain \$270.00 from the \$807.47 owed for the deposit and interest.

I order the Landlord under section 67 to return the balance due of **\$537.47** to the Tenant. Pursuant to the policy guidelines to the Act, I issue a monetary order to the Tenant in those terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: October 14, 2011.

Residential Tenancy Branch