



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 hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders for alleged damage to the rental unit, unpaid rent, for money owed or compensation under the Act or tenancy agreement, to keep the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

I note that these parties had one prior hearing, in which the Landlord had withdrawn his claim at the time of the hearing, as he had served the Tenants with his Application and evidence the night before the hearing was to take place. That hearing proceeded on the Tenants' Application.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Is the Landlord entitled to hold the security deposit?

Background and Evidence

The Landlord testified that he had a six month contract with the Tenants. He testified that after they moved in they did nothing but complain about the rental unit. He further testified that the Tenants called the police "on him" about 3 or 4 times. He testified he has not been charged.

The Landlord wants the Tenants to pay him the security deposit for breaking the lease with him. He also requests compensation for alleged damage to the rental unit.

The Landlord has also requested that he get the filing fee for the first Application returned to him, which was the one he withdrew at the first hearing, as well as the fee for filing this Application.

The Landlord did not provide any documentary evidence for this hearing. He testified he had submitted all his evidence at the first hearing and we should have it because he provided it in that file.

One of the Tenants appeared and submitted documentary evidence for this hearing.

The Tenants submitted several pages of documents in evidence, two of which related to the end of the tenancy. One is the standard form mutual agreement to end tenancy, signed on March 21, 2011, by both parties. The second document was prepared by the Landlord. It states that he reserves, "... the right to bring further claims for monetary damages if the Tenants do not comply to vacate premises by March 29, 2011 at 12 pm." The Landlord claimed there was a different document allowing him to claim \$1,500.00 against the Tenants, however, this document was not in evidence before me.

Both parties agreed the Tenants left the rental unit on March 29 at 12 pm.

The Tenants also provided photographs of the rental unit following the end of the tenancy.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that all the claims of the Landlord against these Tenants must be dismissed, without leave to reapply.

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 that the Landlord has submitted no documentary evidence to prove any damage or loss occurred due to these Tenants. I note that the Landlord has been to dispute resolution many times prior to this tenancy and knows, or ought to know, the process and procedures.

In this case he did not submit any documentary evidence to support his claim that the rental unit was left unclean or damaged. I further find that the evidence of the Tenants indicates that the rental unit was left clean at the end of the tenancy.

Furthermore, the evidence of the Tenants indicates the Landlord released them from any monetary claim, since they moved out of the rental unit at the required time.

As to the claim for the Landlord to recover the fee for his first application, I note that the Landlord had applied for this first fee to be returned through the correction/clarification process. He stated in that application he wanted the fee returned because, "his application had not been dealt with". The request for the return was denied, as the Dispute Resolution Officer found that the Landlord had withdrawn his application.

In the hearing today when I asked the Landlord why he requested the return of the first application fee in this hearing when it was denied in a request for correction, he claimed he "forgot" that he made the request in the correction/clarification application. This, along with his lack of evidence submitted for this hearing, leads me to conclude that the Landlord lacks credibility and his claims against these Tenants lack merit. Therefore, I dismiss the Landlord's claims against these Tenants, without leave to reapply.

I also note that the Tenants have a monetary order for the return of their security deposit, which remains in full force and effect and may be enforced through the Provincial Court. The Landlord has no right to keep this security deposit and has been ordered to return it.

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: November 28, 2011.

Residential Tenancy Branch