



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an Order to keep all or part of the security deposit and to recover the filing fee for the Application.

The landlord's agent and one tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to respond each to 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.

Issue(s) to be Decided

Has the landlord established an entitlement to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on April 1, 2011, actually ended at the end of August 2011, when the tenants vacated the rental unit, monthly rent was \$1,600.00 and the tenants paid a security deposit of \$800.00 at the beginning of the tenancy.

The landlord's monetary claim is in the amount of \$308.20, comprised of \$123.20 for a heating service call, \$45.00 for floor cleaning, \$30.00 for fridge cleaning, \$30.00 for a broken blind, \$25.00 for oil, and \$65.00 for 13 light bulbs.

The landlord's evidence was a copy of the tenancy agreement and an invoice from the heating service company.

In support of their application, the landlord's agent stated that the tenants left the rental unit in an unclean state, which required cleaning.

Additionally, the landlord's agent stated that the tenants were responsible for supplying the oil to their rental unit, but failed to do so, which caused the landlord to call for a heating service call.

The landlord's agent stated that after the new tenants moved into the rental unit, the rental unit needed further cleaning and replacement of 13 light bulbs.

In response, the tenant testified that they did not agree to the heating service call as they only called the landlord to inquire about a lack of heat. They were unaware that the landlord made a service call and were of the belief that the landlord was responsible for heating in the rental unit.

The tenant denied leaving the rental unit dirty, as he stayed up all night cleaning.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

The landlord failed to supply any receipts, with the exception of the heating service call, and I therefore find that the landlord has failed to meet steps 1 and 3 of their burden of proof. Additionally, due to the disputed verbal testimony surrounding the issue of the heating service call, I find that the landlord failed to prove that the landlord suffered a loss due to the actions or neglect of the tenants. I therefore **dismiss** the landlord's **monetary claim** for \$308.20 for cleaning, replacing light bulbs and a heating service call, without leave to reapply.

As I have dismissed the landlord's application, I decline to award them the filing fee.

Pursuant to section 67 of the Act, I grant the tenants a **monetary order** in the amount of **\$800.00**.

I am enclosing a Monetary Order for **\$800.00** with the tenants' Decision. This Order is a **legally binding, final Order**, and it may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this Monetary Order.

Conclusion

The tenants are granted a monetary order of \$800.00.

The landlord's application is dismissed, without leave to reapply.

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: December 02, 2011.

Residential Tenancy Branch