



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on One Month Notice to End Tenancy for Cause dated November 16, 2011 and the tenant's Notice to vacate, a monetary order to keep the security deposit for damages left at the end of the tenancy and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on November 21, the tenant did not appear.

Issue(s) to be Decided

The landlord stated that she is no longer seeking an Order of Possession as the tenant vacated the unit on November 30, 2011. The landlord still seeks to retain the security deposit for damages.

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation.

Background and Evidence

The landlord testified that the tenancy began on June 1, 2011, with rent of \$650.00, at which time the tenant paid a security deposit of \$325.00. The landlord testified that the tenant caused significant damage to the unit which was not repaired. The landlord did not submit evidence of the damage nor receipts to prove the expenditures or losses. However stated that the costs to repair the unit will exceed the amount of the security deposit.

Analysis

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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent.

I find that the landlord's application seeking compensation for damage left in the rental unit was filed prior to the tenant vacating the unit. I find that the monetary claim was made before the full extent of the damage to the unit and actual costs were established. In addition, a tenant is also entitled to repair damage at the end of the tenancy pursuant to section 37 of the Act.

Given the above, I find that the landlord's application for compensation for damages and to keep the security deposit was premature and should have been pursued once all of the costs and damages have been assessed. Therefore I find that that landlord's application must be dismissed with leave.

Conclusion

I hereby dismiss the landlord's application with 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 06, 2011.

Residential Tenancy Branch