



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the unit, damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. Both parties were affirmed.

Preliminary Matters

The landlord testified that on December 29, 2011, she submitted an amended application which included an evidence package of 8 pages plus 19 photographs. This evidence was not submitted to the Residential Tenancy Branch at least 5 days prior to the hearing; the tenant did not have copies of the evidence. In the absence of service of this evidence to the Residential Tenancy Branch at least 5 days prior to the hearing; I set the evidence aside. The landlord was at liberty to make oral submissions.

The amended application was made within a time frame that did not allow the landlord to meet the requirements of section 2.5 of the Rules of Procedure. The amended application was not served to the RTB or the tenant at least 5 days prior to the hearing. Therefore, I did not consider an amendment.

Issue(s) to be Decided

Is the landlord entitled compensation in the sum of \$2,000.00 for damage to the unit and damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in April 2009; rent was due on the first day of each month. The tenant vacated the unit at the end of September, 2011. A copy of the first page of a standard tenancy agreement was supplied as evidence; the agreement had not been fully completed.

No move-in or move-out condition inspection reports were completed.

The landlord has claimed \$500.00 for fuel oil; which she withdrew as the heating oil tank was left full by the tenant.

The landlord claimed \$100.00 for gardening the tenant did not complete. The tenant stated he mowed the lawn and raked and did not realize the landlord wished he would do more than that. The landlord believed the neighbour mowed the lawn.

The landlord claimed \$1,400.00 for window replacement. The windows were original in this house that was built at the turn of the last century. The landlord stated the tenant did not heat the home last winter which resulted in mould growth on all of the windows. The tenant stated that when he moved in the windows were mouldy.

The tenant stated that one window did break as a result of the wind; that he put some Plexiglas in that window and was in the process of gluing the window back together.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations 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.

In the absence of condition inspection reports, the landlord must provide a preponderance of evidence that the tenant has breached the *Act* and caused damage to the unit.

The landlord withdrew the claim for heating oil, as the tenant did fill the tank.

There was no evidence before me supporting the cost claimed by the landlord for gardening; therefore, that portion of the application is dismissed.

There was no evidence before me of the state of the windows at the start of the tenancy, any evidence that the tenant was negligent, causing mould, or evidence that

the windows were simply not beyond their useful lifespan. The windows were at least 50 years old and I find that the landlord has failed to show that it was due to a breach of the Act, that the windows required replacement. Further, the landlord did not provide any verification of the costs.

Therefore, the landlord's claim is dismissed.

Conclusion

The landlord's claim is dismissed.

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: January 03, 2012.

Residential Tenancy Branch