



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the original application filed October 18, 2011 and notice of hearing documents by registered mail on October 20, 2011, the tenant did not attend. All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord filed an amended application on December 20, 2011 which the landlord's agent testified was served on the tenant by regular mail, which is the landlord company's regular practice, being to serve an amended application as evidence.

The landlord's agent testified that this tenancy began as a one month fixed term tenancy on August 1, 2011 when the tenant transferred from another suite, and expired on September 30, 2011. The tenant was the relief resident manager of the apartment building, and a parent of the tenant was the resident manager. Rent in the amount of \$1,135.00 per month was payable in advance on the 1st day of each month, however, the tenant's rental payments were credited \$500.00 per month in exchange for employment duties with the landlord, making the rent \$635.00 per month, and there are

no rental arrears. The landlord's agent also testified that the tenant had overpaid rent for one month prior and the landlord currently holds a \$5.00 credit on behalf of the tenant. No security deposit or pet damage deposit was paid to the landlord. The resident manager was to complete a move-in condition inspection report and collect a security deposit from the tenant, but neglected to do either. Consequently, there is a blank form for the move-in condition inspection report, and the resident manager and this tenant vacated their respective rental units without notice to the owner. The move-out condition inspection report was not completed, and the landlord has provided the blank form for the move-in/out condition inspection reports. However, the landlord also provided a copy of written notice from the tenant of the tenant's intention to move out on September 30, 2011.

The landlord's agent also testified that the tenant left the rental unit without cleaning in the manner preferred by the landlord, and the landlord claims \$105.00 for cleaning, as well as \$644.00 for painting and \$67.20 for repairing a hole in a wall. The agent was not able to provide any testimony or evidence of the condition of the rental unit when the tenant moved out in comparison to the condition of the rental unit when the tenant moved in. Invoices for the services provided for the rental unit were provided in advance of the hearing, but the landlord's agent was not present to witness the condition of the unit at the commencement or at the end of the tenancy, and relies on the invoices for a damage claim against the tenant. The landlord's agent stated that it seems intentional on the previous resident manager's part that the tenant was not required to pay a security deposit and that no move-in condition inspection report was completed.

Analysis

Firstly, with respect to service of the amended application, I do not agree with the landlord's agent that service can be made under the *Act* by regular mail, regardless of the company's regular practice. Section 89 of the *Residential Tenancy Act* states that an application for dispute resolution must be given by leaving a copy with the person, by sending a copy by registered mail to the address at which the person resides, if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant; or as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*]. There is no provision in the *Act* for serving an amended application by regular mail. Therefore, I find that the tenant has not been properly served with the amended application, and that application must be dismissed. The landlord served the tenant with a copy of the original application by registered mail on October 20, 2011 and provided proof of such service. The original application was filed on October 18, 2011, and the *Act* states that a person who files an application must

serve it within 3 days of making it. I find that the original application has been served in accordance with the *Act*.

With respect to the landlord's claim for damages, I find that the landlord has not proven any damages; there is no move-in condition inspection report, no move-out condition inspection report, and no witnesses to any of the damage claimed. The landlord's agent stated that the agent did not view the rental unit at the beginning or the end of the tenancy, and testified that the agent is assuming the walls need repair because there are invoices. The landlord's agent relies on those invoices, however, in order to be successful in such a claim, the onus is on the claiming party to pass the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss;
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, the only element that has been satisfied is the amount of such damage or loss, and therefore the landlord's application cannot succeed.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: January 06, 2012.

Residential Tenancy Branch