

DECISION

Dispute Codes MND, MNR, MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, site or property, for unpaid utilities, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking a monetary order for compensation for loss under the Act, the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. Both parties have confirmed receipt of evidence filed by the other party and have made detailed reference to them during the hearing. As each party has confirmed receipt of both the notice of hearing and evidence package of the other, I am satisfied that each has been properly served under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

Both parties agree that the Tenancy ended on November 30, 2011 and that a security deposit of \$325.00 was paid. Both parties also agree that a forwarding address in writing was not given by the Tenant to the Landlord. Both agree that the Tenant verbally gave the Landlord a forwarding address on either December 13 or 14.

The Landlord seeks recovery of \$700.00 in a monetary order consisting of \$223.00 for utilities over a 4 month period. The Tenant disputes this stating that she has not been provided with any evidence of the owed amount. The Tenant states that she is only aware of \$150.00 owed for utilities to the Landlord. The Landlord also seeks to recover \$477.00 for hiring a person to clean, repair, paint and remove garbage from the rental property. The Tenant disputes this stating that there was no damage to the unit and that all of her personal property save for some clothing were removed and placed in the carport on November 30, 2011. The Landlord relies on witness letters from a new

Tenant of another rental unit and another from the same property. The Landlord states that these letters confirm that the Tenant left a "big mess" in the suite and the backyard all the way to the alleyway. The Landlord further submits that these letters confirm that the Tenant left all of her personal property outside and that save for some clothing left in the rental that all of the remaining items both inside and outside were removed by her contractor on December 10, 2011.

The Tenant is seeking a monetary order for \$10,000.00 for the loss of personal property and aggravated damages. The Tenant has submitted a list of items with their approximate value listed that she claims was improperly disposed of by the Landlord for \$6,405.00. The Tenant relies on internet search of like items for their estimated value. The Tenant stated that she was assisted by the witness, S.D. in packing and storing all of these items outside under the carport on November 30, 2011 save for some few clothing items left inside the rental unit. The Tenant also states that she left these items unattended overnight to return on December 1, 2011 to discover them missing. The Landlord states that his contractor did not remove any items from the property until December 10, 2011. The Tenant's evidence confirmed by her witness states that she later returned on December 3, 2011 to pick up her belongings under the carport. The Landlord argues that she cannot be held responsible for items left outside unattended under the carport next to the alleyway.

Analysis

The onus or burden of proof is on the party making the claim. In this case both parties are responsible as they have each made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The Landlord's claim for \$223.00 for recovery of utilities has not been established. The Tenant is in dispute of the claim, but has conceded that \$150.00 is owed. The Landlord has not provided any supporting evidence to establish her claim of outstanding utilities. I find based on the Tenant's own direct testimony that utility cost of \$150.00 is owed to the Landlord. The Landlord has established a claim for \$150.00 in utilities.

I find on a balance of probabilities that the Landlord has established a partial claim for cleaning and the removal of garbage/debris left in the carport and backyard. There is no evidence of damage in the rental unit that would require the expense of repairing and painting the rental unit. I grant a nominal award of \$150.00.

I find based upon the evidence provided that the Tenant has failed to establish a claim for the loss of personal property or aggravated damages. Through the Tenant's own direct testimony, she left her property with an estimated value of \$6,405.00 unattended next to an alleyway for 1-3 days. I find that the Landlord cannot be held responsible for the Tenant's own negligence. The items that were disposed of on December 10, 2011 by the Landlord's contractor was confirmed by other witnesses (Tenants) to be of no obvious value and that the Tenant failed to collect these items. The Tenant's application for monetary compensation for loss of personal property and aggravate damages is dismissed.

The Landlord has established a monetary claim for \$300.00 in total. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain the \$325.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 of the Act for the balance due of \$25.00.

Conclusion

The Landlord is granted a monetary order for \$25.00.
The Landlord may retain the security deposit.
The Tenant's application 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: February 22, 2012.

Residential Tenancy Branch