



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, for unpaid rent or utilities, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 20, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is there unpaid rent or utilities and if so how much?
3. Is there a loss or damage under the Act, regulations or tenancy agreement and if so how much?
4. Is the Landlord entitled to compensation for these claims and if so how much?
5. Is the Landlord entitled to retain the Tenants' security deposit?

Background and Evidence

The tenancy started in March 2010. The tenancy was verbal and was on a month to month basis. Rent was \$750.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$375.00 in advance of the tenancy. The Landlord was told at the start of the conference that a previous hearing had dealt with the security deposit and that decision would stand. The Landlord's claim for the Tenant's security deposit is dismissed without leave to reapply. This tenancy ended on July 6, 2010.

The Landlord said there was no move in or move out condition inspection reports completed, but the Landlord did say the unit had been renovated in 2009. No evidence was supplied as to the condition of the rental unit at the start of the tenancy. The Landlord did supply some pictures of the unit that may have been taken at the end of the tenancy, but it was unclear when the pictures were taken.

The Landlord said her total claim is for \$5,339.62. The Landlord said her claim includes \$3,800.00 for painting the unit due to the smell of cigarette and marijuana smoke in the unit, \$800.00 to repair floor damage due to a sewer back up, \$208.00 for cleaning and dump fees, \$344.70 for unpaid hydro, \$118.92 for unpaid water bills, \$18.00 for costs incurred to make this application and the \$50.00 filing fee for this proceeding. The Landlord said the Tenant did not give her their written address until December 6, 2011, in a demand letter they wrote to her for payment of \$4,600.00 that was monetary award from a previous Dispute Resolution Hearing. The Landlord said she has not paid the Tenants their demand from the Monetary Order.

The Landlord said she did not make a formal written demand for the payment of unpaid utilities because she did not have the Tenants written address. In addition the Landlord said that the Tenants owed 40% of the utilities, but the Landlord did not provide any evidence of a cost sharing of utilities with the Tenants as there was no written tenancy agreement.

The Landlord said that she did not agree with the previous decision regarding this tenancy and she was going to take the Tenants to court about it

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

On reviewing the evidence and testimony, I find the Landlord has not provided evidence that establishes the condition of the rental unit at the beginning or the end of the tenancy. It is the Landlord responsibility to do both these report and if the report are not completed the Landlord is unable to establish the condition of the rental unit at the start or end of the tenancy. Consequently the Landlord cannot establish proof that the Tenant damaged the rental unit or left it in a condition that was not similar to the start of the tenancy. As a result of lack of proof to establish the condition of the rental unit at the start or the end of the tenancy, I dismiss the Landlord's application for damages to the unit, site or property including the painting claim for \$3,800.00, the floor damage

claim for \$800.00 and the claim for \$208.00 for cleaning and dump fees. The claims are dismissed with leave to reapply.

Further the Landlord said the Tenants were responsible for 40% of the utilities, but the Landlord did not provide any evidence that this was the case. There is no tenancy agreement stating this and the Landlord did not provide any proof that the Tenants had previously paid any part of the utilities. Consequently, I find the Landlord has not established grounds to prove the Landlord's claim for unpaid utilities and I dismiss the claim for Hydro of \$344.70 and the water bill for \$118.92 with leave to reapply.

In addition the Landlord's claim of \$18.00 for mailing costs, pictures and copying are not eligible costs under the Act and therefore are dismissed without leave to reapply.

As well, as the Landlord was not successful in this matter I dismiss her application to recover the filing fee of \$50.00 from the Tenant.

Conclusion

The Landlord's application is dismissed 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*.

Dispute Resolution Officer