



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing and gave affirmed testimony, however, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 18, 2012 the tenant did not attend. The landlord provided evidence of having sent the documents and a receipt issued by Canada Post bearing that date. Both parties provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord testified that a registered mail package notice has been received and assumes it is evidence from the tenant, but the landlord has not yet picked up the registered mail from the post office. The landlord was provided with an opportunity to adjourn the proceedings to retrieve that evidence prior to commencing the hearing but declined. All evidence and the testimony provided by the landlord have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that the parties entered into a fixed term tenancy to begin on January 1, 2012 and to expire on December 31, 2012. A copy of the agreement was not available for this hearing, although the landlord testified that a copy was left with the

Residential Tenancy Branch. The agreement stated that rent in the amount of \$2,200.00 per month was payable in advance on the 1st day of each month in addition to \$75.00 per month for parking. On or about December 12, 2011 the landlord collected a security deposit from the tenant in the amount of \$1,100.00 which is still held in trust by the landlord. The landlord also testified that a move-in condition inspection report was completed by the parties, but did not provide the date it was completed or a copy of the written report.

The landlord further testified that the tenant sent a text message to the landlord on December 19, 2011 stating that the tenant would not be moving into the rental unit and requested the security deposit be returned. The landlord responded that the tenant would lose the security deposit.

The landlord further testified that the rental unit was re-rented for January 1, 2012 but the new tenant would not accept the tenancy if parking was not included, and the landlord paid \$75.00 per month for parking but did not provide receipts or other evidence to substantiate that claim. The landlord therefore claims \$75.00 per month for the duration of the fixed term for parking, for a total of \$900.00. The landlord testified that the rental unit was re-rented for \$2,275.00 per month and collected \$1,137.50 as a security deposit from the new tenant. Later in testimony, the landlord testified that the rent was \$2,200.00 per month including parking, and that the previous testimony was incorrect. The landlord did not retract the testimony of the amount of security deposit collected from the new tenant.

The landlord also testified that the tenant had requested 3 key fobs for the building, at a cost of \$150.00 as well as extra keys which cost the landlord \$30.00, although no receipts were provided.

The landlord also claims \$570.00 for loss of work which was required to show the rental unit to ensure that the landlord would not lose revenue as a result of the vacancy caused by the tenant's actions. No proof of wages or loss of wages was provided for the hearing.

The landlord requested an adjournment of the hearing to provide further evidence, however that request was denied so as not to prejudice the tenant.

Analysis

The *Residential Tenancy Act* and the Rules of Procedure require a party to provide evidence to the Residential Tenancy Branch and to the opposing party at least 5 days prior to the hearing. The Rules of Procedure also provide that where evidence has not been exchanged as required, the Dispute Resolution Officer must apply Rule 11.6 which states that where a party states evidence was submitted to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the hearing, the DRO may adjourn the hearing to receive that evidence. Rule 11.5 states that if the dispute Resolution Officer decides to accept evidence that was not provided to the other party or to the Residential Tenancy Branch, the other party will be given an opportunity to review the evidence and request that the matter be adjourned, and the Dispute Resolution Officer must apply Rule 6.4 and rule whether to adjourn the dispute resolution proceeding. In this case, the landlord testified that a copy of the tenancy agreement was provided to the Residential Tenancy Branch, but was not before me at the hearing. Also, the landlord was provided with an opportunity to adjourn the proceedings in order to retrieve evidence from the tenant that the landlord believed was waiting to be picked up at the post office, but the landlord declined.

It is not known why the tenant provided evidence to the Residential Tenancy Branch and assumingly to the landlord but failed to attend the hearing, however in the absence of testimony to substantiate the evidence, I cannot consider it. Further, if I were to accept further evidence from the landlord in the absence of the tenant or any submissions from the tenant, the tenant may be prejudiced, and therefore I cannot accept any further evidence from either party.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy 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 other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts were made to mitigate, or reduce such damage or loss.

In the circumstances, I find that the landlord has failed to establish any loss of revenue. The rental unit was re-rented for the same tenancy commencement date and the same rental amount. I further find that the landlord has failed to establish any cost for parking, keys, fobs or loss of work as a result of a breach of contract, and has therefore failed to satisfy element 3 of the test for damages.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply. I hereby order the landlord to return the security deposit to the tenant. Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the \$50.00 filing fee for the cost of this application.

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: March 28, 2012.

Residential Tenancy Branch