



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened in response to an application by the Landlord pursuant to section 38 of the *Residential Tenancy Act* (the “Act”) for an Order to retain all or part of the security deposit. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy began on May 1, 2009 and ended on January 31, 2012. Rent of \$1,150.00 was payable monthly. At the onset of the tenancy, a security deposit of \$575.00 was collected by the Landlord.

The Landlord states that the tenancy agreement includes provision for the Tenant to be responsible for the maintenance and supplies for a hot tub. The Landlord filed a copy of the tenancy agreement as evidence. The Landlord also provided an invoice dated February 2, 2012 for work completed on the hot tub in the amount of \$1,222.56. The Landlord states that the invoice reflects repairs made to the hot tub as the hot tub was not working at move-out. The Landlord states that the Parties shared a common intention that the maintenance of the hot tub included repairs and that the Tenant would make repairs should the hot tub break down. The Landlord states that the Landlord is only claiming a portion of the repairs made to the hot tub.

The Tenant states that the intention was for the Tenant to be responsible for maintenance of the hot tub and that the Tenant did maintain the hot tub. The Tenant states that during the summer of 2011 the hot tub was blowing breakers so the Tenant disconnected the electrical source and also discovered that the motor was not working. The Tenant states that he met with the owner of the unit at this time and that the owner told the Tenant that the owner would make the repairs to the hot tub but that these repairs were never made and the Tenant was not able to use the hot tub. The Tenant states that the cost items on the invoice are related to repairs to items, such as the top, that was old and likely caused some of the damage to the hot tub. The Tenant's witness states that she was present during the summer of 2011 when the Landlord told the Tenant that the Landlord would make the repairs to the hot tub.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Given the tenancy agreement, and considering the evidence of the Tenant in relation to repairs, I find on a balance of probabilities that the tenancy agreement does not include the Tenant's responsibility for repairs to the hot tub. Given the Landlord's evidence that the invoice was in relation to repairs made to the hot tub, I find that the Landlord has not substantiated its claim. I therefore dismiss the Landlord's application.

I order the Landlord to return the security deposit plus interest of \$575.00 to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$575.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 04, 2012.

Residential Tenancy Branch