



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, RPP, MNDC

Introduction

This hearing dealt with an application by the landlord seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has also made an application seeking a monetary order for a loss or damage suffered under the Act, the regulations or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to retain the security deposit?

Is the tenant entitled to a monetary order for a loss or damage suffered under the Act, the regulations or the tenancy agreement?

Background and Evidence

The tenancy began on or about August 12, 2011. Rent in the amount of \$1250.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$625.00.

The tenant gave the following testimony; On March 1, 2012 he gave his one month's notice to move out; was forced out by the landlord on March 23, 2012, left a television and a wool rug behind, made attempts to have the items returned but was busy with work and had difficulty arranging a time to meet with the landlord, is seeking a monetary order in the amount of \$8107.39.

The landlord gave the following testimony; the tenant is behind two months' rent, tenant told the landlord that he would be out by the 20th of the month, the tenant then changed it to the 23rd, never returned the fob remote, made multiple attempts to get in contact with the tenant to have him pick up his belongings including attending at his work, made a date to arrange the pickup of items however the tenant did not show up, tenant abandoned the television and wool rug, both items were very old and had "no value".

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with the tenant's application as follows;

First Claim – The tenant is seeking \$499.99 for the replacement of a television. The landlord and his witness both stated the television left behind was of a very old vintage and that had little or no value. The tenant supplied an "invoice" for this hearing however he did not provide any proof of an actual receipt. In addition the "invoice" does not detail the company name, does not reflect the tenant's name, different postal code delivery address and does not specify the final total. The tenant has not supplied sufficient evidence to support this portion of his claim and I therefore dismiss this portion of his application.

Second Claim – The tenant is seeking \$7244.50 for the replacement of a 10X12 wool rug from Beijing. The landlord disputes this portion of the tenant's claim. The landlord testified that he had only seen a very old and dirty rug in the unit; the landlord's witness corroborated this. The landlord felt it was of no value and if it was why the tenant would leave it behind? The tenant provided a copy of a "Cash Memo" of what appears to be of a rug listed in Hong Kong Dollars. The item is dated April 4, 2012, this post dates the

tenancy. In addition it does not list the company name or to whom the item was sold to. With all of these deficiencies in the evidence I cannot ascertain the authenticity of the "Cash Memo" and I therefore dismiss this portion of the tenant's application.

Third Claim – The tenant is seeking the return of \$362.90 of March's rent as he was "forced" to leave early. The landlord acknowledged that the tenant did leave on March 23, 2012 and was not disputing that the tenant should be credited for that time. Based on the agreement of the two parties the tenant is entitled to \$362.90.

I will deal with the landlord's application as follows;

First Claim- The landlord is seeking \$100.00 for the replacement of a fob remote. The tenant stated he returned all the keys and fob and disputes this portion of the landlords claim. The landlord was unable to provide any receipt that he actually replaced the fob and suffered a financial loss. Based on the insufficient evidence before me I dismiss this portion of the landlord's claim.

Second Claim – The landlord is seeking two months of unpaid rent = \$2500.00. The tenant disputes this amount; he does agree that he is behind one month for a total of \$1250.00. The landlord provided a printout of the amount outstanding but did not provide any copies of receipts, ledgers or rent books. Based on the insufficient evidence provided by the landlord and the testimony of the tenant I find the amount of outstanding rent owing to the landlord is \$1250.00 and I award that amount to him.

Based on the amount awarded to the tenant I will apply that amount of \$362.90 towards the landlord's award of \$1250.00 leaving an outstanding amount of \$887.10 to the benefit of the landlord.

As for the monetary order, I find that the landlord has established a claim for \$887.10 in unpaid rent. I order that the landlord retain the \$625.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$262.10. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As neither party was completely successful in their application I decline to award either party the recovery of the filing fee.

Conclusion

The landlord is granted a monetary order for \$262.10. The landlord may retain the security deposit.

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: May 29, 2012.

Residential Tenancy Branch