



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit. The parties did not participate in the conference call hearing but were both represented by counsel.

The parties were in a previous dispute which was addressed in a hearing held on March 7, 2012 at which time the tenants were awarded the return of the security deposit. As the issue of the security deposit is *res judicata*, I dismiss that claim without leave to reapply.

At the outset of the hearing, I inquired of the landlord's counsel whether any documentary evidence had been submitted. She stated that she had instructed her assistant to fax 29 pages of evidence to the Residential Tenancy Branch on March 21, but she apparently had no record confirming that the fax had been sent. She claimed that she served the tenants with the documents on or about the same date. The tenants' counsel stated that the tenants had received 29 pages of evidence for the March 7 hearing, but that no evidence had been submitted for this hearing.

After the hearing, I instructed Residential Tenancy Branch administrative staff to search fax records to determine whether faxed evidence had been received for this hearing. They were unable to find any record of documents having been submitted either by fax or any other means by the landlord for this hearing.

I find that the evidence was not submitted to the Residential Tenancy Branch and therefore the evidence has not been considered.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2011 and was set to continue for a fixed term until January 31, 2012. They further agreed that rent was set at \$1,700.00 per month and that the tenants vacated the unit in early December 2011.

The landlord seeks to recover \$3,400.00 in lost income. The landlord's counsel stated that the landlord discovered on December 5 that the tenants were vacating the unit and that they vacated the following day. She further stated that the landlord had immediately advertised the rental unit on what she described as a "very popular community website". When asked when the landlord was able to re-rent the unit, the landlord's counsel advised that it was after January.

The tenants' counsel testified that he himself had drafted a letter which he gave to the tenants with instructions to serve their landlord. He stated that the letter advised the landlord that he had breached a material term of the tenancy agreement, including failure to address repair concerns and illegal entry into the rental unit, and advising that the tenancy would end on December 6, 2012. The tenants' counsel believed that the tenants served this letter on the landlord on December 5. The landlord's counsel stated that the landlord had not received the letter.

The landlord seeks to recover \$1,500.00 as the cost of repairs to the bathtub and garburator in the rental unit. The landlord's counsel stated that the repairman found that the damages were caused by the tenants' misuse. She stated that when the tenancy began, everything in the unit was brand new as the unit had been recently renovated. The tenants' counsel stated that the tenants said the bathtub had a crack in it and had asked the landlord repeatedly for repairs to be performed. He argued that as the landlord had not performed an inspection at the start or end of the tenancy and had not completed a condition inspection report, he was prevented from bringing a damage claim.

The landlord seeks to recover \$260.00 paid to clean the rental unit at the end of the tenancy. The landlord's counsel stated that the unit was not clean. The tenant's counsel disputed the claim.

Analysis

As the parties did not participate in the conference call hearing or submit sworn affidavits, the evidence upon which I must make my decision is almost entirely hearsay evidence provided by counsel. The only direct evidence before me was the testimony

of the tenant's counsel in which he stated that he had drafted the letter advising the landlord that the tenancy would end on December 6.

At the hearing, the tenant's counsel acknowledged that the tenants should pay occupational rent for the 6 days they occupied the rental unit in December. On the basis of this admission, I award the landlord \$329.00. The landlord bears the burden of proof and I find that the balance of the claim is not proven on the hearsay evidence as equally probable hearsay evidence was provided in rebuttal. I therefore dismiss the balance of the claim.

As the landlord has only been partially successful, I find that he should recover \$20.00 of the filing fee and I award him that sum.

Conclusion

The landlord is awarded \$349.00 and I grant him a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial 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: May 16, 2012

Residential Tenancy Branch