



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent and damage to the rental unit, and to recover the cost of the filing fee from the tenant.

The landlord and his agents appeared and gave affirmed testimony.

The landlord testified that the tenant was served with the application for dispute resolution and notice of hearing by registered mail on April 18, 2012. The landlord supplied evidence of the tracking number of the registered mail.

I find the tenant was served in a manner complying with section 89 of the Act and the hearing proceeded in the tenant's absence.

The landlord and his agent were provided the opportunity to present their evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on July 31, 2011 and monthly rent was \$550.00. The landlord stated that the tenancy ended on April 21, 2012 and that the tenant paid a security deposit of \$100.00.

The landlord's monetary claim is as follows:

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|---|-----------|
| April and May 2012 unpaid rent | \$1100.00 |
| Partial payment of security deposit | \$175.00 |
| BC Hydro 28 Nov '11 (22 Sep to 23 Nov '11) | \$58.87 |
| BC Hydro 29 Jan 2012 (23 Nov '11 to 20 Jan '12) | \$274.79 |

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| BC Hydro 27 March (21 Jan to 20 Mar '12) | \$224.46 |
| Broke bedroom door | \$310.24 |
| Damage to walls | \$159.00 |
| Carpet damaged and stains | \$82.65 |
| Window blinds | \$16.56 |
| Filing fee | \$50.00 |
| Total | \$3411.58 |

The landlord filed evidence seeking to amend his application, to include \$550.00 for unpaid rent for March 2012, and the filing fee of \$50.00, although the landlord had requested that amount in his original application.

The landlord and tenant were previously in dispute resolution on the landlord's application for an order of possession and a monetary order.

In her Decision of April 4, 2012, in the previous dispute resolution, the Dispute Resolution Officer made several key findings, which will be referenced herein.

Among other things, the Dispute Resolution Officer ("DRO") awarded the landlord an order of possession and a monetary order for unpaid rent for March and April 2012 in the amount of \$550.00 each month. That Decision also decided the issue of unpaid utilities from September 22, 2011 through March 21, 2012, by awarding the landlord a monetary order for \$241.55. That Decision also found that the tenant paid a security deposit of \$275.00.

That Decision also directed the landlord to retain the tenant's security deposit of \$275.00 and awarded the landlord a monetary order for the balance due of \$1116.55.

As to the remaining claims, the landlord testified that he lost revenue of \$1000.00 for March and April 2012 due to the actions of the tenant in causing another tenant in the 7 bedroom residential property to vacate. The landlord submitted an email in support of this contention.

As to the broken door, the landlord claimed that the damage by the tenant required the landlord to have the bedroom door replaced. When questioned, the landlord stated he did not know the age of the door, but that it was there when he bought the residential property in 2000.

As to the damage to the walls, the landlord claimed that the tenant caused damage, which required repair and repainting. Additionally, the tenant damaged the carpet and window blinds, according to the landlord.

When questioned, the landlord agreed that he had not performed a move-in condition inspection and there was no condition inspection report.

When questioned concerning his loss of revenue for May 2012, the landlord stated that he “didn’t bother” trying to re-rent the rental unit, due to a by-law infraction.

Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove four different elements:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

As to the issue of unpaid rent for April 2012, for \$550.00, unpaid utilities through March 20, 2012, and a security deposit deficiency of \$175.00, these issues were decided in previous dispute resolution on April 4, 2012.

Due to the legal principle of res judicata, I am bound by this earlier Decision and I cannot re-decide these issues.

I therefore dismiss the landlord’s claim for these amounts.

As to the landlord’s claim for loss of revenue for May 2012, the landlord confirmed he did not make any effort to re-rent the rental unit, and I therefore **dismiss** his claim for \$550.00 as the landlord failed to take reasonable steps to mitigate his loss, which is step 4 in his burden of proof.

As to the landlord’s claim for rent loss from other tenants, I find the landlord submitted insufficient evidence to prove that he took reasonable steps to mitigate his loss by making any attempt to find new tenants, which is step 4 in his burden of proof. I therefore **dismiss** his claim for \$1000.00.

As to the landlord’s claim for damages to the rental unit, a key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and

completing the condition inspections. In the circumstances before me the landlord has failed to meet his obligation under the Act of completing the inspections.

Due to the lack of a move-in condition inspection report or other independent evidence depicting the state of the rental unit at the beginning of the tenancy, I cannot determine whether the tenant has committed the alleged damages.

The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I therefore dismiss without leave to reapply the landlord's claim for damages and associated costs, including \$310.24 for a bedroom door, \$159.00 for damage to the walls, \$82.50 for carpet damage and \$16.56 for window blinds.

Conclusion

Due to the above, I **dismiss** the landlord's application, **without leave to reapply**.

As the landlord's application is dismissed, I do not find he is entitled to recovery of the filing fee.

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: June 22, 2012.

Residential Tenancy Branch