



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNR, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repairs, cleaning, unpaid utilities and for the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, it was determined that the landlord mailed his evidence to the tenant and dropped it off at a Residential Tenancy Branch Office on July 19, 2012, just five days prior to the hearing. At the time of the hearing this evidence was not received by me or by the tenant.

Pursuant to section 3.6 of the *Residential Tenancy Branch Rules of Procedure*, the applicant must serve evidence that he intends to rely on, to the Residential Tenancy Branch and the respondent at least five business days before the hearing. The landlord filed the application on June 01, 2012 and had ample time to serve his evidence but chose to do so just three business days before the hearing. Therefore this evidence was not considered in the making of this decision.

Issues to be decided

Has the landlord established a claim for costs of repairs, cleaning, utilities and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on August 01, 2011 and ended on April 20, 2012. Rent was \$1,130.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$475.00 plus a pet deposit of \$475.00.

The tenant provided the landlord with a forwarding address on May 15, 2012 at which time the tenant paid utilities in the amount of \$231.11. The landlord made an application for damages and to retain the security deposit within 15 days of receiving the tenant's forwarding address.

The landlord is claiming the cost of repairs, cleaning and utilities. The tenant denied having caused any damage to the property and stated that the unit was clean at the end of the tenancy. The tenant stated that he hired a carpet cleaning machine and steam cleaned the carpets. He also pointed out that the carpets are about 12 years old and had stains from prior tenancies. The landlord stated that the tenant's pet had caused damage to the lawn and the fence. The tenant agreed that his dog had dug holes in the yard, but stated that he had filled them with dirt and had seeded the areas. The tenant denied any damage to the fence caused by his dog.

Regarding utilities, the landlord pointed out that after the tenant paid the balance owed, he received another bill. This issue was discussed at length. Since the tenant has filed incomplete evidence, he agreed to pay \$100.00 towards the landlord's claim

The landlord is claiming the following:

1.	Damage to property	\$912.80
3.	Utilities	\$191.16
4.	Carpet cleaning	\$224.00
5.	General cleaning	\$200.00
	Total	\$1,652.96

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord did not have any evidence to support his claim. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the 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.

Based on the contradictory testimony of both parties and the lack of documentary evidence to support the claim, I find that the landlord has not established a claim for damages. However, I do find that the landlord is entitled to \$100.00 for utilities and I allow the landlord to retain this amount from the pet and security deposits.

Since the landlord has only proven a small portion of his claim, I will award him \$25.00 towards the cost of filing this application. Overall the landlord has established a claim of \$125.00.

I order that the landlord retain \$125.00 from the security and pet deposits of \$950.00 and return the balance of \$825.00 to the tenant on or before August 31, 2012.

Conclusion

The landlord must return \$825.00 to the tenant on or before August 31, 2012.

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: July 25, 2012.

Residential Tenancy Branch