



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

The parties confirmed they had attended dispute resolution on May 11, 2012 during which the matters pertaining to the security deposit and February 2012 rent were heard and a binding decision was issued May 18, 2012.

After further review I find that there is no provision under the *Residential Tenancy Act* to allow the matters of the security deposit and February 2012 rent to be reheard as to do so would constitute res judicata.

Res judicata is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case. Consequently, I find the Landlord is barred from raising in this hearing the matters that were contained in the May 11, 2012 hearing and may only seek compensation for new matters raised in this application.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid utilities, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord confirmed receipt of the Tenant's evidence which included a CD with a video recording and photos, a typed statement, copies of three hand written receipts, a medical note, and a photograph.

The Tenant submitted that she did not receive the Landlord's evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. She confirmed receiving 10 photos and a typed document titled "Details of Dispute" along with the hearing documents in early June 2012. The Tenant advised that she received a package of evidence from the Landlord at 10:00 p.m. on July 25, 2012 which did not provide enough time for her to respond to.

The Landlord confirmed he did not give the Tenant the same evidence which was submitted to the *Residential Tenancy Branch* at the time he filed his application. He also confirmed that he delivered a second package of evidence to the Tenant on July 25, 2012 at 10:00 p.m. The Landlord submitted that a copy of the second package of evidence was submitted to the *Residential Tenancy Branch* July 25, 2012, however it had not been placed on the file, therefore I could not determine if the same documents were served upon the Tenant. I explained to the Landlord that I would not be considering the evidence that was not before me nor would I be considering evidence that was not provided to the Tenant; however I would be considering his testimony.

The parties agreed they entered into a month to month tenancy that began on November 1, 2009 and ended mid February 2012. Rent was payable on the first of each month in the amount of \$900.00. No inspection reports were completed at move in or at move out.

The Landlord stated that he is seeking to recover costs of the natural gas and electricity for February 2012 at an amount of 30% of the total bills. He noted that the electric bill comes every two months so he adjusted the Tenant's portion down to \$87.02 and the natural gas bill is \$156.00. The Landlord confirmed he did not provide the Tenant copies of these bills prior to making this application for dispute resolution and noted that the bills were included in the evidence package that was served July 25, 2012.

The Tenant argued that she had given the Landlord money in advance of receiving the bills as supported by her evidence which included copies of receipts showing a credit for utilities written by the Landlord. She stated that she has no idea what is currently owed because she has not had an opportunity to review the bills she just received; however she believes she has already paid these bills with the prepaid amounts.

The Landlord advised that he has owned this house since 2003 and the suite had been painted at that time. The house was built in approximately 1975 and the Landlord resides in the upper residence and he rents out the lower self contained suite. The Landlord submitted he is seeking money for damages to the unit and noted that he has rounded up the amounts he has claimed as follows:

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| \$450.00 | For cleaning up the house and yard and removal of debris. He stated he had an invoice he received from March 2012 however he did not provide testimony as to the actual amount paid or the date the work was performed. |
| \$350.00 | To fix electricity and outlets. He advised that he paid "Roger" his electrician on March 1, 2012. |
| \$350.00 | To replace the toilet. He claims he purchased a toilet for \$109.00 and other parts for a total of around \$195.00 plus about \$155.00 to install it. |
| \$750.00 | To repair the base board heater which he advised was radiant water heat. He point to a picture he had submitted where it showed the cover off of the heater and stated there was water leaking from the pipe that he had to have repaired. |
| \$100.00 | To replace the locks on the front door and the bathroom. He stated there was a knock on his door and when he looked the door handles were laying on his step. He went and checked the rental unit and the front door did not have the door handle/lock nor did the bathroom door. He had to have them reinstalled. |
| \$500.00 | To patch all the holes in the walls and repaint the entire unit. He stated that he had to purchase 4 gallons of paint and paid \$200.00 for labour to have the work completed. |

The Tenant asserted that this claim is being made in retaliation to her claims which were heard February 21, 2012 and May 11, 2012. She stated that this relationship became very acrimonious and that the police were involved towards the end of this tenancy. She submitted that she had to vacate the property very quickly and was not able to take her items that were in the storage unit because the Landlord changed the

locks. She asserted that the items which the Landlord paid to have discarded were not garbage or debris; rather it was her possessions from the storage unit.

The Tenant acknowledged that she did leave some possessions behind in the rental unit which included three chairs, two garbage bags, some CD's and tapes, a television and T.V. stand, a computer desk, and a white outdoor end table. She acknowledged that all of these items would fit into a regular pick up with ease.

The Tenant disputes the remainder of the Landlord's claims. She said the toilet worked fine while she was there, although it did run continuously. She said she has no idea why the Landlord is claiming electrical work unless it was to look at a light that worked intermittently and install light switch and outlet covers as there were none in the unit during her tenancy.

The Tenant confirmed the cover would always fall off of the baseboard heater which she would always snap back on. She said this unit was not leaking water nor was it broken, she just thought it would snap off when it either heated up or cooled off.

The Tenant acknowledged that during the tenancy she installed her own door handle/lock on the front door and the bathroom and when she had to move out quickly she removed her handles and left the existing ones, with the keys, on the Landlord's doorstep for him to install.

The Tenant denies being responsible for painting as she says she painted the entire unit and left it in better condition than at the outset of her tenancy. She confirmed that she removed one coat hanger which was screwed into the wall which left three small holes in the wall that needed to be patched and painted.

In closing the Tenant stated that she did not understand why these claims would be her responsibility when it was clearly retaliation against her and the amounts she was awarded. She stated that she was of the opinion that the Landlord simply does not understand this process and she would like this to stop so she can move on with her life.

Both parties confirmed that each of their two witnesses would be providing testimony that would mirror their own. They acknowledged that their witness statements would simply cross out the other so they agreed that their witnesses did not need to provide testimony during this proceeding.

Analysis

The Landlord did not provide copies of his evidence in accordance with section 3.5(a) of the *Residential Tenancy Branch Rules of Procedure* which stipulates that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Landlord has not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Landlord's evidence will not be considered in my decision. I did however consider the Landlord's testimony and the evidence which was received by the Tenant and the *Residential Tenancy Branch* with the application and notice of dispute resolution.

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In this case the Tenant acknowledged leaving some possessions behind in the rental unit which included three chairs, two garbage bags, some CD's and tapes, a television and T.V. stand, a computer desk, and a white outdoor end table; which she claims would have fit into a regular sized truck. The Tenant also confirmed she did not re-

install two door handles/locks and that there were three screw holes in the wall when she removed her coat rack.

Based on the aforementioned I find the Tenant has breached section 37(2) of the Act, leaving possessions in the rental unit, 3 screw holes in the wall, and requiring the re-installation of door handles/locks at the end of the tenancy. That being said, the Landlord has not provided receipts to prove the actual costs for these items.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

As per the foregoing I find the Landlord is entitled to nominal damages for the removal of the Tenant's possessions and the re-installation of the door handles/locks in the amount of **\$200.00**.

The Tenant disputes the remainder of the Landlord's claim. She argued that she had prepaid money towards the utilities and without seeing the actual invoices she cannot determine if there is anything outstanding. She also claims there was no damage to the unit.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy and to prove the costs incurred. Accordingly, the only evidence before me was disputed verbal testimony which I find insufficient to meet the Landlord's burden of proof. Accordingly, I hereby dismiss the remainder of the Landlord's claim, without leave to reapply.

The Landlord has been partially successful with his claim; therefore I award partial recovery of the filling fee in the amount of **\$25.00**.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$225.00** (\$200.00 + \$25.00). This Order is legally binding and must be served upon the Tenant.

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 30, 2012.

Residential Tenancy Branch