



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Preliminary Issues

Each party acknowledged their attendance at the previous hearing held July 3, 2012 pertaining to the Tenant's application where they agreed to settle the matters relating to the Tenant's security deposit and possessions.

As the matter pertaining to the security deposit has been previously determined I dismiss the Landlord's request to retain the security deposit.

Introduction

This hearing had originally been scheduled to be heard with the Tenant's application on July 3, 2012 however I reconvened it until today to afford the Landlord the required amount of time to submit evidence in support of his application.

The Landlord had filed an application for dispute resolution to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the pet and or security deposit, 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 I confirmed that each party understood 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

At the outset of this proceeding the Landlord confirmed he made no effort to submit evidence in support of this claim even though the matter was reconvened to this date to allow time for evidence submissions.

The Landlord affirmed that the previous manager completed the move in condition inspection report form with the Tenant and provided the Tenant with a copy. He did not know which date this inspection took place and stated the Tenant would be able to confirm this.

The Landlord began by acknowledging their claim could be reduced to include the one week it took him to repair the unit which involved repairs to the kitchen cabinets, removal of flooring tiles from the cabinets, repairs to the walls, and removal of debris from the apartment.

The Landlord stated that the Tenant was working on completing the repairs however he was taking too long and causing more damage so they requested that the Tenant stop making the repairs and move out so they could move forward in getting the unit ready for another tenant. The Landlord confirmed that there was no move out condition inspection completed at the end of this tenancy.

The parties were given the opportunity to settle these matters however the Tenant declined to settle as he does not believe he owes the Landlord money. The Tenant submitted that he had been making the repairs and was working within the agreed upon timeframes for him to be completed by the 15th of the month. However, the Landlord told him to stop the repair process and to get out prior to the 15th.

The Tenant submitted the damage to the cupboards was pre-existing water damage which was worsened after a flood occurred in January. He argued that he did not leave garbage behind rather the articles were his possessions which the Landlord discarded and for which he was compensated for in the previous hearing.

The Landlord attempted to settle the matter again, for an amount equal to the amount issued to the Tenant in the previous hearing. Again, the Tenant declined to settle.

Analysis

When a landlord makes a claim for damage or loss they hold the burden of proof to establish their claim based on the balance of probabilities.

To prove a loss requires the application to satisfy four different 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 Landlord 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 Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case the Landlord relies solely on his verbal testimony that the alleged damage occurred during the tenancy. 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.

As noted above the Landlord has the burden to prove damages occurred during the course of the tenancy and the only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Landlord's burden of proof. Accordingly I dismiss the Landlord's claim, without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, without leave to reapply.

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 27, 2012.
