

DECISION

Dispute Codes SS, MND, MNDC, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord to serve documents or evidence in a different way than required by the Act, for a monetary order to keep all or part of the security deposit, for unpaid rent, for money owed or compensation for damage or loss, for damage to the unit and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties have acknowledged receiving the evidence package by the other party. I note that the Tenant's evidence was not part of the file. Tenant clarified that the evidence submitted was a 4 page letter responding to the Landlord's claim. The Landlord has confirmed this. I find that as both parties have the Tenant's evidence and that it is a statement in response to the claim that the hearing shall proceed and the Tenant may read the letter into the hearing if she desired and that there would be no prejudice to either party. Based upon the above, I find that both parties have been properly served with the notice of hearing and evidence package as deemed under the Act.

It was clarified by the Landlord that the Substitute Service was not being requested and that this was an error on the application. This portion of the application is withdrawn by the Landlord.

It was also clarified with both parties that the security deposit was dealt with in Residential Tenancy File No. 792241 on July 12, 2012 and cannot be spoken to as that decision has already been made.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent and for compensation for damage to the unit?

Background, Evidence and Analysis

Both parties agreed that the monthly rent was \$1,075.00 and that the Tenancy ended on April 30, 2012. Both parties agreed that a signed tenancy agreement exists, but that neither party has submitted a copy into evidence.

The Landlord seeks a monetary claim of \$429.29. This consists of \$208.00 for unpaid rent for the period of October 26, 2011 to October 31, 2011 from the beginning of the Tenancy and \$221.52 for the repair of a broken mirror (\$181.52) and repair work for gouges and dents on walls (\$40.00) for which the Landlord spent 3 hours to repair in sanding and touching up. The Tenant disputes these claims. The Tenant states that the Tenancy Agreement started on November 1, 2011 and that the Landlord allowed her to move in a few days early. The Landlord claims that he advised the Tenant on two occasions that moving in early required them to pay a prorated amount for the 6 days. The Tenant disputes this. For the damage being claimed, the Landlord has provided an email from the new Tenant who moved in on April 30, 2012 and completed a list of deficiencies on May 7, 2012 in absence of the Landlord which states that there was a crack in the mirror and dents and chips in different walls. The Tenant dispute this stating that the Landlord failed to complete a condition inspection report for the move-in and the move-out. The Landlord confirms this stating that the form was given to the Tenant, but was never completed or returned to him.

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as he has made the application. 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 their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find on a balance of probabilities that the Landlord has failed to establish his claim for unpaid rent and damages. The Landlord has failed to provide sufficient evidence to support his claims. The Landlord's application is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed.

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: August 28, 2012.

Residential Tenancy Branch