



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary issues

The parties informed me that a previous hearing had been held for an application brought by the tenant to recover double the security deposit. At that hearing the tenant was successful and the tenant received a Monetary Order for double the security deposit. The landlord has applied to keep the security deposit at this hearing. I refer the landlord to *Section 77* of the *Residential Tenancy Act (Act)* which states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision

that I render must honour the existing findings. Therefore the landlord is now barred by the common law principle, *res judicata*, from filing a claim for the security deposit and this section of the landlords claim is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit is site or property?
- Is the landlord entitled to a Monetary Oorder to recover unpaid utilities?

Background and Evidence

The parties agree that this tenancy started in April 2009 and ended on February 29, 2012. The tenant paid a monthly rent of \$1,100.00 however this was reduced to \$900.00 during the tenancy. The parties also agree that the tenancy agreement indicates that the tenant was to pay two thirds of any utility bills.

The landlord testifies that he has not submitted any documentary evidence for this hearing as he had submitted it for the previous hearing. The landlord testifies that the tenant failed to clean the carpets at the end of the tenancy and the landlord seeks to recover the sum of \$334.00 to have the carpets cleaned. The landlord testifies that he is not yet had the carpets cleaned as he does not have any money.

The landlord seeks the sum of \$295.00 to have the ceiling cleaned. The landlord testifies that the tenants used the fireplace and did not damp the fireplace properly this caused the smoke to go up to the ceiling creating smoke damage.

The landlord seeks to recover the sum of \$150.00 to repair the back stairs. The landlord testifies that these stairs were modified by the tenant without authorization from the landlord. The landlord testifies that he is not yet had this repair done.

The landlord seeks to recover the sum of \$15.00 for a new front door latch. The landlord testifies that the tenant removed this latch.

The landlord seeks to recover the sum of \$22.00 for a splitting maul. The landlord testifies that the tenant broke the handle and the landlord had to buy a new one.

The landlord seeks to recover the sum of \$82.50. The landlord testifies that the tenant filled up the water tank after it was frozen and before the landlord could repair the tank. The landlord testifies that he was billed \$120.00 to fill the tank up and states that \$37.50 was lost because the tenant did not consult with the landlord before he had the tank filled himself. The landlord testifies that he was waiting for the tank to empty so he could repair a cracked valve. The landlord agrees that he did not inform the tenants that he should not filled the tank.

The landlord seeks to recover the sum of \$212.50 for storing the tenant's five ton truck and a small car on the landlord's property. The landlord testifies that the tenant did not remove his five ton truck until five-days short of the month and the tenant stored as a the car on the landlords property for two weeks after the tenancy had ended.

The landlord seeks to recover the sum of \$60.00 to clean the deck. The landlord testifies that the tenant left the sun deck in a deplorable state.

The landlord seeks to recover the sum of \$32.49 for a Canada Post lock and key. The landlord testifies that the tenant had a key to the post box which the tenant had had copied. The landlord testifies that he told the tenant he would pay him for the key because the landlord did not want the tenant to have access to his mailbox after the tenant moved.

The landlord seeks to recover the sum of \$13.34 to pay for photographs showing the damage that the tenant had caused. The landlord agrees that he did not provide these photographs in evidence for this hearing.

The landlord testifies that the tenant owes the sum of \$68.78 in unpaid Hydro. The landlord testifies that the tenant left the rental unit before he had paid his portion of this Hydro Bill. The landlord's agrees he has not yet given the tenant a copy off that Hydro Bill or a written demand for payment.

The tenant disputes the landlords claim. The tenant testifies that the landlord failed to do either a move in or a move out condition inspection report of the property. The tenant testifies that the landlord's son was dealing with the tenant as he was moving out and told the tenant not to bother to clean the carpets as the carpets were junk. The tenant testifies that the carpets had not been clean when he moved into the rental unit.

The tenant testifies that the ceiling already had smoked damage when he moved into the rental unit. The tenant testifies that when the wind blew down a certain way it would force smoke out of the fireplace and this caused further smoke to damage the ceiling. The tenants also disputes the landlords claim that he didn't damp down the fireplace the tenant testifies that you could not damp down this fireplace.

The tenant testifies that he did enhance the back stairs because the wood was rotten. The tenant testifies that he did not alter these at the end of the tenancy because the landlord wanted to make a rolling staircase so he could get his vehicles past this area.

The tenant testifies that he did not use the front door and therefore did not remove the front door latch. The tenant testifies he used to use the door on the other side and he knows nothing about any missing parts on this door.

The tenant testifies that he is not responsible for damaging the handle on the splitting maul. The tenant testifies that the landlord told him it was a new handle however the

tenant disputes this as the handle did not look new. The tenant testifies that both the landlord and the tenant used the splitting maul and if the handle is damaged it could have been done by either of them.

The tenant testifies that the landlord did not inform the tenant not to fill up the water tank. The tenant testifies that he ran out of water because the tank leaked so he filled the tank up; however he did not know that the landlord wanted to empty the tank to affect a repair.

The tenant agrees that he did leave his five ton truck on the property at the end of the tenancy. The truck had a flat tire and the landlord refused to turn the power on to allow the tenant to have access to electricity to pump the tire up. The tenant agrees the truck was parked for under a month. The tenant also agrees that he left his Mazda parked at the property for approximately one week. The tenant testifies that he has had cars stored at a storage facility and they only charge \$30.00 a month for a car and \$45.00 for a month for a truck. The tenant disputes that the landlord has incurred any costs to store his vehicles at the property as this is a large property and his vehicles would not have been in the landlord's way.

The tenant testifies that he did sweep off the deck with all the debris that had accumulated from the trees on the property. The tenant testifies that he could not scrub the deck as there was no outside tap.

The tenant disputes the landlord's claim for Hydro. The tenant testifies that the landlord did provide a Hydro Bill at the previous hearing and the tenant's share of that would have been \$47.50. The tenant testifies that the Hydro Bill was due on March 27, 2012 however the landlord did not pay it until June 25, 2012. The tenant testifies that his portion of the Hydro Bill was \$47.50 and not \$67.78 that the landlord is claiming. The tenant also disputes his share of the Hydro Bill as he states the landlord had not informed the tenant that the landlord had a full-size freezer at the property.

The tenant testifies that the landlord did not offer him any money for a key that the tenant had had cut for the mail box. The tenant testifies that had the landlord offered to pay for the key the landlord could have had the key and the tenant testifies that he paid under five dollars to have the key cut.

The tenant testifies that he has provided photographic evidence showing that the deck was rotten when he moved in. One of his photographs shows the landlord has put plywood on the deck after the tenant moved out. The tenant testifies that one of his photographs shows a bucket collecting water from leaking gutters. One photograph shows that the steps that are tenant had modified were rotten and there was some wood missing on the landing. The tenant testifies that one photograph shows bad scratches on one side of the property. The tenant testifies that his photographic evidence clearly shows that the property had not been maintained by the landlord.

Analysis

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established,

the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When one party's testimony is contradicted by the other party then the party making the claim must provide corroborating evidence in order to meet the burden of proof. It is my decision that the landlord has provided no corroborating evidence to support his claim that the tenant failed to clean the carpets at the end of the tenancy or that the carpets had been cleaned at the start of the tenancy. The landlord has provided no corroborating evidence to support his claim that the tenant is responsible for smoke damage to the ceiling or that the repairs to the back stairs were not required or an actual costs to rectify any modifications made by the tenant to the stairs. The landlord has provided no corroborating evidence to support his claim that the tenant removed the front door latch or that the tenant was responsible for damage to the splitting maul. The landlord agrees that he did not inform the tenant not to fill the water tank and therefore the tenant would not have known that the landlord wanted the tank empty so the landlord could repair it. The landlord has provided no evidence to show that the tenant left the sun deck in a deplorable state.

With regards to the landlords claim for vehicle storage; although the tenant agrees he did not remove his five ton truck and a smaller car at the end of the tenancy the landlord has not shown that he incurred the financial loss by the tenant leaving these vehicles on the property. When a tenant leaves any personal property at the landlord's property after the tenancy has ended the landlord is entitled to consider this property to be abandoned and can deal with this property in accordance with part five of the residential tenancy regulations.

With regards to the landlords claim to recover the sum of \$32.49 cents for a Canada Post lock and key; the landlord has provided no evidence to show the actual cost incurred in changing the key on his post box.

With regards to the landlords claim to recover the sum of \$13.34 to print photographic evidence showing the damage allegedly caused by the tenant. There is no provision under the *Act* for me to award costs for printing photographs and in addition to this the landlord has not provided any photographic evidence for this hearing.

Consequently, the landlord has failed to meet the burden of proof for his claim for damages to the unit, site or property and the landlords claim is dismissed without leave to reapply.

With regards to the landlords claim for unpaid Hydro of \$68.78; a landlord is required to provide a copy of any utility bill to the tenant with a written demand for payment within 30 days. The landlord has failed to do this and although the tenant had a copy of the utility bill at the previous hearing the tenant disputes the amount due on the bill and the landlord has not provided the tenant with a written demand for payment within 30 days. Consequently the landlord's application for unpaid utilities is dismissed without leave to reapply.

As the landlord has been unsuccessful with this hearing it is my decision that the landlord must bear the cost of filing his own application.

Conclusion

The landlord's application is dismissed in its entirety 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: October 05, 2012.

Residential Tenancy Branch