

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlords has made an application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenants have made an application for a monetary order for money owed or compensation for damage or loss and the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing and evidence package from the other party, I am satisfied that each party has been properly served as deemed under the Act.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?
Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties agreed that this Tenancy began on November 1, 2011 on a month to month basis with a monthly rent of \$1,200.00 payable on the 1st of each month and that a security deposit of \$600.00 was paid on November 1, 2011. This was a furnished rental with no signed Tenancy Agreement. Both parties also agreed that no condition inspection report for the move-in or the move-out were completed. The Tenancy ended on August 1, 2012. Both parties also agreed that the Tenant provided their forwarding address in writing to the Landlord in a letter dated August 13th by regular mail and that the Landlord received it on August 17, 2012.

The Tenants seeks a monetary order \$2,430.00 consisting of \$160.00 for the loss of internet during a 9 month period @ \$20.00 per month, the return of the \$600.00 security deposit and \$1,200.00 for compensation for complying with a 2 month notice to end tenancy issued for Landlord's use under section 49 of the Residential Tenancy Act. The Tenants have provided a copy of the notice dated May 31, 2012 which both parties have agreed that the Landlord had served upon them in person on the same date. The

Tenants state that they complied with the notice, but did not receive any compensation from the Landlord. The Landlord disputes this stating that after the notice was served that both parties agreed verbally to cancel the notice and continue the tenancy. The Tenant's dispute this stating that no such agreement was made. The Tenant clarified the amount of their monetary request and that the total claim based upon the above, totals \$1,960.00.

The Landlord is seeking a monetary order for \$3,946.07 which consists of \$1,200.00 in unpaid August 2012 rent (lost rental income) for lack of notice, an estimated \$235.00 for stolen /missing items from the furnished rental unit, \$680.00 for cleaning labour, \$89.17 for the rental of a carpet cleaner, \$40.90 for cleaning supplies and \$200.00 for laundry charges for cleaning the curtains, drapes and bedding. The Landlord also seeks \$911.00 for the estimated costs of replacing 2 queen mattresses and two carpets as listed in the details of claim. The Tenant disputes these claims and states that no condition inspection report for the move-in or the move-out were completed and as such that there was no way to compare the condition of the rental at the beginning and at the end of the Tenancy. The Landlord relies on photographic evidence to support their claims.

Analysis

I accept the undisputed evidence of both parties and find that the Landlord did serve the Tenant with a 2 month notice to end tenancy for Landlord's use. I find that the Landlord's assertion that the notice was mutually cancelled to continue the Tenancy has not been established. As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case both parties are responsible as they have each made an 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. The notice served is undisputed and with insufficient evidence that the notice was mutually cancelled as the Tenant disputes this claim, I find that the Tenant's have established a claim for compensation upon being served a notice under section 49 of the Act. The Tenant's have been successful in this portion of their claim for the 1 months compensation equal to \$1,200.00.

I further find that the Tenants have failed to establish a claim for the recovery of \$160.00 for the internet. The Tenant has failed to provide any details, invoices/receipts of the claim or that the internet was provided as part of the tenancy. This portion of the claim is dismissed.

I find that the Landlord's monetary claim should properly be for \$2,435.07 in totaling the costs (\$1,200.00 unpaid rent, \$235.00 stolen/missing items, \$680.00 for combined labour costs, \$320.07 for carpet cleaner rental, cleaning supplies and laundry) as opposed to the \$3,946.07 as applied for and being sought as the request to retain the \$600.00 security deposit should be to offset any charges established as opposed to a penalty against the Tenant.

I find that the Landlord has failed to establish a claim for the \$1,200.00 in lost rental income as the Tenant complied with the 2 month notice to end tenancy for Landlord's use and that a notice to vacate is not required. This portion of the Landlord's claim is dismissed.

The Landlord's claim of \$235.00 for stolen/missing items has not been established. The Landlord has failed to provide sufficient evidence to satisfy me that the items were part of the original furnished rental and as well the monetary claim for each item is based upon a "guess" as none of the items have been replaced and no invoices or receipts have been submitted. As stated above, no condition inspection report for the move-in or the move-out were completed to establish a clear comparison of what the state of the rental was at the beginning and the end of the tenancy. The Landlord's application for monetary compensation for damages and for money owed has not been established as such. The Landlord has failed to provide sufficient evidence for the claims. The Landlord's monetary claim is dismissed.

The Tenants have established total monetary claim of \$1,800.00 for the \$1,200.00 in compensation and the return of the \$600.00 security deposit.

Conclusion

The Landlord's application is dismissed.

The Tenant is granted a monetary order for \$1,800.00.

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 12, 2012.

Residential Tenancy Branch