



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for alleged damage to or cleaning of the rental unit, for unpaid rent, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The parties were involved in one prior hearing (the file number is on the cover page of this Decision for reference), in which the Tenant was awarded double the security deposit and various amounts in dispute were offset in that Decision. The Landlord had applied for a Review of that Decision which has concluded.

During the course of the hearing before me, the Landlord referred to evidence that he alleges was submitted in the first hearing between the parties. I note that the Officer for the first hearing writes in the Decision, "... the landlord failed to present any evidence to support his claim for deduction(s)." [Reproduced as written.]

It was also explained to the Landlord that each Application is treated separately and evidence from a prior matter is not moved to a new file.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on August 1, 2010, with the parties entering into a written tenancy agreement. The monthly rent was set at \$5,500.00, and the Tenant paid a security deposit of \$2,750.00. The Tenant vacated the rental unit at the end of December 2011. There were no incoming or outgoing condition inspection reports performed by the Landlord. The Landlord testified he walked around the rental unit with the Tenant at the end of the tenancy, however, I note that this does not conform to the requirements under the Act and regulation for condition reports.

The Landlord claims in this Application for **\$6,845.82**, comprised of an unpaid water bill of \$506.04, light bulbs and a light switch of \$146.18, venetian blind repair \$201.60, parts for a stove \$242.10, a service call to install stove parts \$250.00, and one month loss of rent in the amount of \$5,500.00.

The Landlord claims the Tenant did not pay a water bill in the amount of \$1,706.04. No copy of this bill was provided in evidence. The Tenant was required to pay for water under the tenancy agreement. However, the Tenant overpaid \$100.00 in rent to the Landlord for 12 months and the Landlord has offset this against the water bill, and now claims the balance of \$506.04 for unpaid water.

In reply to this claim the Tenant acknowledged the water bill was to be paid by him, however, he explained the Landlord had offered him a weekend at a resort in exchange for him watering the Landlord's property during the tenancy. The parties agreed during the hearing that they would resolve this portion of the dispute between themselves.

The Landlord is claiming that the Tenant left the rental unit without replacing burnt out light bulbs or repairing a broken switch.

In reply, the Tenant testified that the rental unit went through an unusual number of bulbs, which he had reported to the Landlord. However, the Tenant agreed to pay the Landlord \$146.18 for this.

The Landlord claims the Tenant damaged the blinds in the rental unit and it cost \$201.60 to repair these. He testified that the blinds were hanging from the window by one screw. The Landlord provided no receipt or invoice for this repair.

In reply, the Tenant testified he did not see any damage to the blinds. He denies he owes the Landlord for damaged blinds.

The Landlord claims the Tenant damaged the stove and requests \$242.10 for parts and \$250.00 for a service call to install these parts. The Landlord had no receipt for these parts or the installation.

In reply, the Tenant testified he does not agree he damaged the stove. The Tenant alleges these parts were for cosmetic purposes on the stove and he did not damage

these as these were damaged when he moved in. The Tenant testified that he did repair a hood fan on the stove, as it was scratched by his cleaning person.

The Landlord claims \$5,500.00 for loss of rent, as he alleges he could not rent out the subject unit for one month (January of 2012), due to the condition it was left in by the Tenant. The Landlord testified he did not have a tenancy agreement with these potential renters as they were family who would be staying there for one month.

In reply, the Tenant testified that the Landlord informed him that the rental unit was going to be listed for sale and his sister would be occupying the rental unit during this time. The Tenant testified that the Landlord did not inform him there was going to be renters coming in for January of 2012.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the civil standard, which is, based on a balance of probabilities. In order to be successful, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events in another way, without providing 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, I find the Landlord has failed to prove the Tenant caused damage to the venetian blinds or to the stove and I dismiss those claims without leave to reapply. The

Landlord provided insufficient evidence of how the blinds or stove were damaged or to verify the cost of the alleged repairs.

I also dismiss the Landlord's claims for loss of rent without leave to reapply. I find that the Landlord had insufficient evidence to prove the rental unit was left in such bad condition it could not be rented in the month following the end of the tenancy. For example, there were no photographs to support the Landlord's allegations of damage to the rental unit preventing another renter from occupying. The Landlord also failed to prove that he had a renter ready to move into the rental unit once the Tenant vacated, by providing evidence such as a tenancy agreement or statement from the potential renter(s).

As the Tenant agreed to the cost of the light switch and light bulbs claimed by the Landlord, I award the Landlord **\$146.18**. I grant the Landlord a monetary order in this amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Due to the lack of success of the Landlord's Application, I do not grant the Landlord the recovery of the filing fee.

The Landlord and Tenant agreed during the course of the hearing to resolve the issue of the water bill and the weekend at a resort, between themselves.

Conclusion

The Landlord had insufficient evidence to support his allegations against the Tenant, and his Application is dismissed without leave to reapply. The Tenant agreed to pay the Landlord \$146.18 for light bulbs and a switch. The Landlord is granted an order for this. The parties agreed to settle the water bill between them.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 15, 2012.

Residential Tenancy Branch