



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. A monetary order for compensation for loss under the Act; and
2. To recover the cost of filing their application from the landlord.

The landlord's application is seeking orders as follows:

1. A monetary order damage to the unit;
2. A monetary order for unpaid rent;
3. To keep all or part of a security deposit; and
4. To recover the cost of filing their application from the tenant.

Both parties appeared, gave 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 at the hearing.

Preliminary Issues

I the Dispute Resolution Officer informed the parties, that although the landlord has the same last name as myself, the landlord is not known to me and is of no relationship. The parties were provided the opportunity to have this matter adjourned to appear before another Dispute Resolution Officer.

The parties were not concerned that the Dispute Resolution Officer had the same last name as the landlord and were ready to proceed at today's hearing.

At the onset of the hearing the landlord indicated they are withdrawing their claim for unpaid rent for July 2012. The tenants agreed that as a result of the landlord withdrawing the claim for unpaid rent for July 2012, that the tenants have received compensation for having been served with a two month notice to end tenancy.

Therefore, only the balance of the applications proceeded at today's hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the unit?

Is the landlord entitled to retain all or part of the security deposit?

Are the parties entitled to recover the cost of filing their application from the other party?

Background and Evidence

The tenancy began March 21, 2012. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 was paid by the tenants.

The landlord testified the tenants removed the closet door and the door and all the hinges were lying on the floor. The landlord stated she paid \$210.00 to have the parts re-installed and the closet door hung.

The tenants agreed they removed the door and did not have the door re-installed at the end of tenancy.

The landlord testified the tenants were provided with a microwave at the start of tenancy and when the tenancy ended the tenants left a much older microwave than the original one provided.

The tenants testified the microwave that was left behind was the original one provided by the landlord.

Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant 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 has the burden of proof to prove a violation of the Act and a corresponding loss.

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.

The tenants acknowledge they removed a closet door and did not replace the door at the end of tenancy.

Under the Residential Tenancy Policy Guideline #1 any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit to its original condition before vacating, the landlord may return the rental unit to its original condition and claim the costs against the tenant. Therefore, I find the tenants violated the Act and the landlord suffered a loss. The landlord is entitled to compensation for returning the door to its original condition in the amount of **\$210.00**.

The evidence of the landlord was the tenant did not leave the original microwave provided to them at the start of tenancy, and left a much older microwave in its place. The evidence of the tenants was the original microwave was left behind. In this case, both parties have provided a versions that are equally probable, I find in the absent of any other documentary evidence such as an itemized list of furnishing provided at the start of tenancy and photographs of the original microwave, the landlord has not met the burden of proof. As a result, I dismiss the landlord claim for compensation for the microwave.

As both applications had merit, I decline to award compensation for filing fees to either party.

I find that the landlord has established a total monetary claim of **\$210.00** comprised of the above described amount.

I order that the landlord retain the deposit and interest of **\$210.00** in full satisfaction of the claim and I grant the tenants a monetary order for the balance of their security deposit due in the amount of **\$415.00**. The tenants are granted a formal order should the landlord fail to return that amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep a portion of the security deposit in full satisfaction of the claim. The tenants are granted a monetary order for the balance of their security deposit.

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 11, 2012.

Residential Tenancy Branch