

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to retain the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing and submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background, Evidence and Analysis

Both parties agreed that the Tenant vacated the rental unit on February 28, 2012. Both parties also agreed that furniture was left by the Tenant at the rental unit. The Landlord claims that the Tenant left furniture (couches, televisions, a filing cabinet) and lots of garbage requiring the rental of an "orange bin" (garbage disposal container) from Orange Bins Ltd. for \$869.00 and labour for \$1,231.00 as "Project Management Fees". The Tenant claims that only a few pieces of furniture and various miscellaneous items were left (1 couch and a file cabinet). The Landlord's witness, G.B. confirms the claim and states that it required alot of work. The Tenant's witness, R.G. states that he only remembers leaving a chesterfield, a file cabinet and various other items that he cannot remember.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord relies on the invoice produced by his own office for \$2,100.00 and the direct testimony from his witness, G.B. The Tenant has admitted in her direct testimony and through that of her witness, R.G. that she did leave furniture and various items in the rental unit at the Landlord's request. The Landlord disputes this claim. The Tenant states that the Landlord's witness is lying, but has not provided any proof of such.

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 claims on the Landlord's 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 that the Tenant has admitted in her direct testimony to leaving furniture behind and that the Landlord has established a claim for compensation on a balance of probabilities. However, as the Landlord has failed to provide sufficient evidence to satisfy me on the amount of labour/work required, I find that the Landlord has only established a claim for the recovery of the \$869.00 for the rental and disposal charges based upon the emailed copy of charges for the "orange bin". The Landlord has failed to provide sufficient evidence to satisfy me on the labour/ project management fee of \$1,231.00 as no details have been provided for this claim. Both parties have provided conflicting witness testimony. The Landlord has also applied to retain the security deposit, but states that he has no details of how much it is. The Tenant has stated in her direct testimony that the security deposit was \$247.50. The Landlord disputes this as there are no records for this tenancy.

The Landlord has established a claim for \$869.00 for the rental of the garbage bin. The Landlord's application to retain the security deposit is dismissed as neither party can provide sufficient evidence to satisfy me on what it is. The Landlord having been partially successful is entitled to ½ of the \$50.00 filing fee, \$25.00.

Conclusion

The Landlord is granted a monetary order for \$894.00.

The Landlord's application to retain the security deposit 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: November 09, 2012.

Residential Tenancy Branch