



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent and utility arrears and for damages including repairs and garbage removal in the amount of \$2,586.56.

Despite being served by registered mail sent on September 21, 2012, and confirmed as having been picked up and signed for by the tenant, the respondent did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears and utilities owed?
Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The landlord testified that the tenancy began in November 2010 and ended on October 31, 2011. Rent was \$1,200.00 and a security deposit of \$500.00 was paid. The landlord testified that the tenancy agreement specified that utilities would be in the landlord's name and the tenant was to pay the landlord for the bills as they arrived. Submitted into evidence was a copy of the tenancy agreement, utility invoices, receipts and bank records.

The landlord testified that the tenant fell into arrears for rent and, by the time the tenancy ended, owed \$1,300.00 for rent and \$757.05 for utility arrears. The landlord testified that the tenant also left garbage to be removed and repairs to be done.

Analysis

With respect to the rental arrears owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. In this instance I find that the tenant did not pay the rent when it was due. I find that the landlord is entitled to be compensated \$1,300.00 for rent owed.

In regard to the utilities, I find that the tenant did not pay the utilities as required in the written tenancy agreement that was signed by the tenant. I find that the landlord is entitled to be compensated in the amount of \$757.05 for the payment of utilities.

In regard to the other claims for damages, I find that an applicant's right to claim damages from another party is covered by section 7 of the Act which provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In regard to costs for cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement under the Act, I find that this would need to be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord testified that they did not complete a move-in condition inspection report or a move-out condition inspection report signed by both parties. I find that this has affected the evidentiary weight of the landlord's claims for damages.

Given the above, I find that the landlord has not met the burden of proof to establish that the landlord is entitled to the claim for damages and this portion of the landlord's application must be dismissed.

I find that the landlord has established a total monetary claim of \$2,107.05 comprised of \$1,300.00 rent owed, \$757.05 for utilities and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's security deposit of \$500.00 in partial satisfaction of the above claim leaving a balance due of \$1,607.05.

I hereby grant the Landlord an order under section 67 for \$1,607.05. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partially successful in their application and is awarded monetary compensation for rent and utilities owed.

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: December 12, 2012.

Residential Tenancy Branch