



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for money owed; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 1, 2010 for a 1 year fixed term tenancy beginning on March 1, 2010 that converted to a month to month tenancy on March 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The parties agree the tenancy ended on September 30, 2012; that the tenant provided the landlord with his forwarding address in writing on or before October 10, 2012; and that the landlord returned \$300.00 of the security deposit by cheque written on October 15, 2012. The landlord testified that he had returned \$300.00 for his costs of cleaning the rental unit.

The tenant also testified that he had removed and replace the rental unit's fireplace insert and that as a result he spent approximately \$1,200.00. The tenant submits that he completed this work as per an agreement with the landlord.

The landlord testified that he made no such agreement with the tenant; that the tenant was fully aware that he was not allowed to use the fireplace as per the clause 7 of the tenancy agreement; and that he had the original fireplace insert bolt closed so that tenants could not use the fireplace.

The tenant also seeks compensation in the amount of \$100.00 for the purchase of a fridge that he bought after the original fridge that was included with the rental ceased working. The landlord testified that he only agreed to allow the tenant to bring the fridge for his use, it was not intended to be a replacement for the original fridge, as the landlord testified he would have purchased a new fridge.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

From the evidence and testimony I find the tenant has not completed any repairs that were sanctioned by the landlord; that the replacement of the fireplace insert does not constitute a repair as it was fully noted in the tenancy agreement that it was not to be used and therefore its replacement was not urgent nor necessary for the health or safety of anyone or for the preservation or use of the residential property.

Similarly, I find the tenant's purchase of a fridge cannot be considered an emergency repair under Section 33. I also find the tenant has failed to provide sufficient evidence to dispute the landlord's testimony that the purchase of the fridge and installation of the fireplace insert were agreed upon by the landlord. As such, I dismiss these portions of the tenant's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties I accept the landlord had the tenant's forwarding address as of October 10, 2012 and that while he did return \$300.00 within 15 days of receipt of the forwarding address after the end of the tenancy he did not file an Application for Dispute Resolution seeking to claim against the security deposit for any costs.

As such, I find the landlord failed to comply with his obligations under Section 38(1) and the tenant is entitled to return of the double the security deposit pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$925.00** comprised of \$1,200.00 double the security deposit and \$25.00 of the \$50.00 fee paid by the tenant for this application, as he was only partially successful in his Application; less the amount of \$300.00 already returned to the tenant.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: January 22, 2013

