



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking a monetary order for money owed or compensation for damage or loss, the return of 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 and have confirmed receipt of the submitted 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?

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on September 1, 2012 on a month to month basis as shown by the submitted copy of the signed Tenancy Agreement. The monthly rent was \$790.00 payable on the 1st of each month and a security deposit of \$395.00 was paid. A copy of the condition inspection report for the move-in was completed on September 2, 2012 and the move-out on September 30, 2012 by both parties.

Both parties agreed that the Tenant gave verbal notice to the Landlord to end the tenancy for September 30, 2012 on September 20, 2012. The Tenant vacated the rental unit on September 30, 2012. The Landlord stated that he was able to re-rent the unit on October 1, 2012.

The Landlord seeks a monetary claim of \$1,190.00 consisting of \$790.00 for lack of proper notice(30 days), \$120.00 for carpet cleaning, \$30.00 for blind repairs, \$60.00 for general cleaning, \$10.00 for wall scratches, \$10.00 for a broke shelf, \$150.00 for carpet damage and \$20.00 for caulking damage. The Tenant states that he did leave the rental unit dirty as indicated on the condition inspection report, but disputes the Landlord's damage claims. The Landlord relies on the photographic evidence, but has not submitted any invoices/receipts for the claims.

The Tenant seeks a monetary claim of \$1,002.00 which consists of \$790.00 for the return of double the security deposit, \$52.00 (2 days prorated at \$26.00 per day) for not being able to move in on time, \$10.00 for an overpayment of rent, \$50.00 for no heat during a two week period and \$100.00 for the loss of quiet enjoyment and preparation time for the hearing. The Landlord disputes the Tenant's claims stating that he complied with the Act as both the forwarding address in writing and the end of tenancy was on September 30, 2012 and the application for dispute was filed on October 15, 2012. The Landlord states that the Tenant moved in on September 2, 2012. The Tenant disputes this stating that he moved in September 3, 2012. The Tenancy Agreement was signed on September 2, 2012.

Analysis

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 has failed to submit any evidence of an actual amount for any losses incurred. The Landlord's claim for lack of notice is not made out. The Landlord was able to re-rent the unit with no losses in rent. The Landlord relies solely on the photographs submitted for compensation. Although the Tenant has confirmed that the rental was left dirty requiring cleaning, the Landlord has failed to provide sufficient evidence of loss. However, I find based upon the Tenant's direct testimony that the Landlord has suffered a loss. Accordingly, the Landlord's monetary claim is dismissed, but the Landlord is entitled to a nominal award of \$150.00.

The Tenant's claim for the return of double the security deposit is dismissed. The Landlord has complied with the Act, by filing for dispute within the allowed time period. As for the Tenant's remaining monetary claims, I find that the Tenant has failed to provide sufficient evidence to satisfy me that he is entitled to a 2 day prorated rent return as the Tenant signed the Tenancy on September 2, 2012 and moved in on September 3, 2012. I prefer the evidence in this case of the Landlord over that of the Tenant. The remaining portions of the Tenant's claims are disputed and the Tenant has stated in his direct testimony that the claims are not based upon any losses, but on a guess on what he feels he is entitled to. The Tenant is entitled to recovery of the \$10.00 over payment of rent as the Landlord has confirmed this portion of the claim.

The Landlord has established a claim for \$150.00. The Tenant has established a monetary claim for \$10.00. As the Landlord currently holds the \$395.00 security deposit, I order that the Landlord retain \$140.00 from this amount and return to the Tenant \$255.00. The Tenant is granted a monetary order for \$245.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I decline to make any orders regarding the recovery of the filing fees as both parties have been partially successful.

Conclusion

The Tenant is granted a monetary order for \$245.00.

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 15, 2013

Residential Tenancy Branch

