



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord submitted copies of his proof of service documents for the notice of hearing package served on both parties. As both parties have attended and have confirmed that neither party has submitted any documentary evidence, I am satisfied that both parties have been properly served.

At the beginning of the hearing both parties clarified that the second respondent, F.F.L.H.R.S. was not a Tenant and that the sole Tenant listed on the Tenancy Agreement was A.S.R. As such, I find that the Landlord has included the society in error. The second respondent's name shall be amended and removed from this dispute resolution application.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background, Evidence and Analysis

Both parties agreed that the Tenant gave notice to the Landlord via text message during the first week of November 2012 to vacate the rental unit by November 30, 2012. The Landlord claims that the Tenant vacated the rental on December 2, 2012 as that is when the keys were returned. Both parties also agreed that the \$1,200.00 security deposit was paid and that the Tenant also made a further payment of \$500.00 to pay for cleaning which he admits was required. Both parties agreed that no condition inspection reports for the move-in or the move-out were completed.

The Landlord seeks a monetary claim for \$7,200.00. This consists of \$1,850.00 for unpaid rent for December 2012 as the Tenant failed to give proper notice to end the tenancy, \$1,000.00 for garbage cleaning, \$1,200.00 for the replacement cost of a washer, dryer, dishwasher and fridge as these items were missing at the end of the tenancy. The Landlord also seeks \$3,300.00 for new carpet replacement as there was missing carpet in one room. The Landlord's final claim is for \$1,500.00 for re-painting the rental as there were many holes left in walls requiring patching and re-painting. The Landlord stated that the rental was last painted in July of 2010.

The Tenant has admitted in his direct testimony that he gave notice to end the tenancy by text message during the first week of November 2012. The Tenant also states that he admitted to leaving the rental unit dirty and agreed to pay the Landlord \$500.00 for cleaning based upon a verbal quote given by the Landlord. The Tenant also admits that at the end of the Tenancy, during a walk-thru with the Landlord that the dishwasher and fridge were missing and that the washer and dryer were in the garage. The Tenant disputes the Landlord's claims that the carpets were in left and in acceptable condition. The Tenant further disputes the Landlord's claims for re-painting, but admits that there were between 20-30 picture holes left in the walls.

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 provide sufficient evidence to satisfy me that damage occurred as a result of the actions or neglect of the Tenant. The Landlord has also failed to provide proof of an actual amount required as compensation for the claimed losses. The Landlord admitted that his \$1,200.00 claim was based upon an estimate for used appliances and that no bills or invoices have been submitted as evidence. The Landlord has failed to establish his monetary claim for \$7,200.00.

However, the Tenant has confirmed in his direct testimony the following. The Tenant failed to provide proper notice in ending the tenancy and for overholding the rental until December 2, 2012. That the rental was left dirty requiring \$500.00 in cleaning which he

accepted and paid. As well as admitting that there was no dishwasher or fridge left at the end of the tenancy, I find that the Landlord is entitled to a nominal award based upon the direct testimony of the Tenant. As the Landlord has failed to provide any evidence of mitigation, I grant a nominal award for unpaid rent due to improper notice for \$925.00 (1/2 of the monthly rent December), \$400.00 for the missing appliances and \$200.00 for painting (of the walls requiring painting and patching). I grant the Landlord \$50.00 in partial satisfaction of the recovery of the filing fee. The Landlord has established a total monetary claim of \$1,575.00. I order that the Landlord offset this claim against the retained security deposit of \$1,200.00 and the \$500.00 paid for cleaning. The Landlord is order to remit \$125.00 to the Tenant for the difference.

The Tenant is granted a monetary order for \$125.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$125.00

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 25, 2013

Residential Tenancy Branch

