



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, O

Introduction

This is an application for a monetary order for unpaid rent, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

This is a hearing that was adjourned from January 21, 2013 upon a request of the Tenant that was granted for circumstances that were beyond her control.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I find that both parties have been properly served as deemed under the Act.

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

This Tenancy ended on January 3, 2013. Both parties agreed that there was no signed tenancy agreement, but that a verbal agreement of \$700.00 for monthly rent was payable on the 1st of each month and a security deposit of \$350.00 was paid.

The Landlord seeks a monetary claim of \$1,900.00 which consists of \$1,200.00 in rent arrears and \$700.00 in compensation for money owed or compensation for loss of rental income. The Tenant has admitted in her direct testimony that she owed rent and confirms the arrears of \$1,200.00 for rent owed up to the end of December 2012. The Landlord states that the Tenant overhauled the rental unit until January 3, 2013. The

Landlord states that as of this date, the Landlord is no longer renting and has kept the basement for her son.

The Landlord also seeks to retain the \$350.00 security deposit. Both parties have agreed that the a condition inspection report for the move-out was completed in which damage was noted and the Tenant signed the agreement to surrender the \$350.00 for deductions regarding the damage of "walls in main bedroom north and south, damage to wall and stickers to be removed." The Landlord states that damages totalled \$340.00 and that there is a \$10.00 credit to be applied to the rent arrears of the Tenant. The Tenant disputes this, but has confirmed that she signed the agreement and was "in a rush to leave".

As explained to the parties at the outset of 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 regarding 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 on a balance of probabilities based upon the direct testimony provided by both parties that the Landlord has established a claim for \$1,200.00 in rent arrears. The Tenant has admitted not paying all of her rent. As for the \$700.00 in compensation, I find that the Landlord has failed to establish a claim. The Landlord's own direct testimony states that they were no longer seeking to rent the basement and did not suffer any loss of rent. The Landlord also stated in her direct testimony that no costs or expenses resulted from this. This portion of the monetary claim is dismissed.

As for the claim to keep or retain the \$350.00 security deposit, I find that as both parties have already entered into an agreement for the Tenant to surrender the security deposit to the Landlord for damages at the end of the tenancy as shown by the completed condition inspection report on January 4, 2013 that no further action is required for this portion of the application.

The Landlord has established a claim for \$1,200.00 in rent arrears for a monetary order. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Tenant is also credited with \$10.00 leftover from the security deposit. The Landlord is granted a monetary order for \$1,240.00. This order must be served upon the Tenant. This order

may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$1,240.00.

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: March 26, 2013

Residential Tenancy Branch

