



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for money owed or compensation for damage or loss and recovery of the filing fee. The Tenant has made an application for a monetary order for the return of double 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 notice of hearing package and the submitted documentary evidence by the other party, 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 Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that the Tenancy began on April 15, 2005 and ended on July 31, 2012 and that a security deposit of \$387.50 was paid on March 25, 2006.

The Landlord seeks a monetary order for \$387.00 for damage to the property. The Landlord states that the Tenant left the rental unit with a broken window, stains on the carpet throughout, marks/holes on the walls and carpet. The Tenant disputes this stating that the stains were from the previous tenant and that the remaining issues were from normal wear and tear. The Landlord relies on photographs taken of the rental unit after the Tenant vacated. The Tenant states that there were no condition inspection reports made for the move-in or the move-out by the Landlords. The Landlord also noted that they were not the original Landlords that entered into the agreement with the Tenant, but purchased the property afterwards.

The Tenant seeks a monetary order for \$1,550.00 which consists of the return of double the security deposit of \$387.50 and pet damage deposit of \$387.50. The Tenant states that the Landlord was provided with their forwarding address in writing on July 31, 2012 when they vacated. The Landlord disputes this stating that no forwarding address has been received until they received the Tenant's Application for dispute resolution. The Landlord states that there was no pet damage deposit and refers to a copy of the signed tenancy agreement which states that only a security deposit of \$387.50 was taken on March 25, 2006.

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.

I find on a balance of probabilities that the Landlord has failed in their monetary claim of \$387.00. The Landlord has failed to satisfy me that the Tenant was responsible for any damages or loss. The Landlord has failed to satisfy me that the alleged damage or loss occurred due the neglect of the Tenant. Although the Landlord states that the damages exceed the amount claimed, she has failed to provide any proof of an actual amount for compensation for the damages, ie. invoices, receipts or records of renovations/repairs. The Tenant disputed the Landlord's claims stating that most of the issues were due to normal wear and tear. The Landlord has failed to provide sufficient evidence to satisfy me of damages or costs. The Landlord's application is dismissed.

As for the Tenant's Application, I find the Tenant has failed to provide sufficient evidence to satisfy me their entire claim. The Landlord has disputed that a pet damage deposit was received by the Landlord and the Tenant has failed to provide any supporting evidence of this claim, ie. receipt. There was no mention of a pet damage deposit noted on the signed tenancy agreement. I find on a balance of probabilities that there was no pet damage deposit and that this portion of the Tenant's Application is dismissed.

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord disputes that the Tenant provided their forwarding address in writing until the Tenant filed an application for dispute resolution. Since the Tenant did provide it at the time of the application the date of the Tenant's Application of November 19, 2012 will serve as notification as complying with section 38 of the Act.

I find based upon the evidence provided by both parties that the Tenant has established a claim for the return of double the security deposit of \$387.50. The Tenant has established a total monetary claim of \$775.00. The Tenant is also entitled to the interest accrued since the deposit was paid on March 25, 2006 of \$13.26. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$838.25. 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's Application is dismissed.

The Tenant is granted a monetary order for \$838.26.

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: April 05, 2013

Residential Tenancy Branch

