



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, 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, to keep all or part 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 the hearing and have confirmed receipt of the Landlord's notice of hearing package, I am satisfied that both parties have been properly served. Both parties have also acknowledged receiving the submitted documentary evidence by the other party.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties agreed that this tenancy ended on January 17, 2013 and that the monthly rent was \$1,295.00 and that a security deposit of \$647.50 was paid.

Both parties also agreed that the Tenants failed to pay rent of \$645.00 for December 2012 and \$1,295.00 for January 2013.

The Landlord seeks a monetary order for \$5,000.00 which consists of \$4,465.00 for damages (invoice from contractor), \$645.00 for unpaid rent for December 2012 and \$1,295.00 for January 2013.

The Landlord states that the rental unit was left in an uninhabitable state that required repairs before a new Tenant could occupy the unit. The Landlord relies on an incomplete condition inspection report dated for the move-in on September 9, 2011. The Landlord has also provided a copy of the quotation/invoice from the contractor dated January 15, 2013 and various photographs. The Tenant disputes the Landlord's claims with an exception that the wood trim for the doorways were damaged by a dog during the tenancy. The Tenants state that new trim was bought and left at the rental unit. The Tenant has noted in her direct testimony that the invoice for repairs is dated January 15, 2013 and that they were still in occupation of the unit until January 17, 2013 and that no contractors attended during their occupancy. The Tenant also notes that the invoice is for unit #6 and not unit#2 for which they were residents. The Landlord's witness, M.C. the contractor states that it was perhaps a mistake on his part and that he did work on two major renovations and one minor repair for the Landlord at that time. The Landlord's property manager, C.E. when questioned regarding the condition inspection report stated that no report was made for the end of the tenancy by her and cannot clarify why the condition inspection report for the move-in shows white-out and that it would have her signature.

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.

Based upon the direct testimony of both parties, I find that the Landlord has established a claim for unpaid rent of \$645.00 for December 2012 and \$1,295.00 for January 2013. The Landlord's documentary evidence also shows that a cheque was received by the Landlord from the Tenant for \$1,295.00 which was returned as NSF. The Landlord has established a monetary claim for \$1,940.00.

As for the Landlord's claim for damages, I find that the Landlord's documentary evidence and direct testimony to be contradictory and unclear. The Landlord has failed to provide sufficient proof of damages that occurred through the actions of the Tenant.

The Landlord relies on an incomplete condition inspection report that is questionable as the signature on the report cannot be verified by the property manager, C.E. as she states that no such report was completed by her. I find that this incomplete report cannot be relied upon. The Landlord also relies on an invoice from her contractor, but has provided an invoice for unit #6 as opposed to the unit #2. Without further details of the actual work performed, which the witness (the contractor), M.C. is unable to provide at the time of the hearing, I find that the invoice cannot be relied upon. The Landlord's claim for damages is dismissed for lack of sufficient evidence.

The Landlord has established a monetary claim of \$1,940.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$647.50 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$1,342.50. 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 \$1,432.50.
The Landlord may retain the \$647.50 security deposit.

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 25, 2013

Residential Tenancy Branch

