



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for damage to the rental unit and for authority to retain the tenant's security deposit.

The landlord appeared; the tenant did not appear.

The landlord testified that he served the tenant with his Application for Dispute Resolution and Notice of Hearing by registered mail on March 1, 2013. The landlord supplied documentary evidence of the registered mail receipt, which included the tracking number.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and for other monetary compensation?

Background and Evidence

I asked the landlord questions about the beginning and ending date of the tenancy, and monthly rent. The landlord said he did not have that information. The landlord also provided no evidence concerning the amount of the tenant's security deposit.

Listed on the landlord's application was a request for monetary compensation in the amount of \$2425. The landlord, however, said that he was not actually seeking this amount; rather he wanted to retain the tenant's security deposit.

I asked the landlord some questions about the sum he claimed in this application and how he came up with the amount listed, with a reply that he "figured it up himself."

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. The landlord's obligations concerning inspections and an inspection report are dealt with in Sections 23, 24, 35, and 36 of the Act.

The landlord failed to provide the condition inspection reports, or even any evidence that inspections had taken place. The landlord also submitted no other independent record of the condition of the rental unit at the start of the tenancy.

I therefore find the landlord failed to submit that damage occurred during the tenancy due to the actions of the tenant.

Further the landlord clearly said that the reason for his application was to retain the security deposit, and has submitted no evidence that he has suffered a loss, such as with a receipt or invoice proving that he has suffered a loss in that amount.

I therefore dismiss the landlord's application, without leave to reapply

As I have dismissed the landlord's claim against the tenant's security deposit, I find that the tenant is entitled to a return of her security deposit and I order the landlord to return this deposit to the tenant without delay.

I have not granted the tenant a monetary order as there was no clear evidence provided of the amount paid and held by the landlord.

If the landlord fails to return the security deposit to the tenant, the tenant may make an application for dispute resolution seeking a monetary order, which may subject the landlord to a filing fee.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit without delay.

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* and is being mailed to both the applicant and the respondent.

Dated: May 27, 2013

Residential Tenancy Branch

