



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF, MNSD

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities and recovery of the filing fee. The Tenant has also 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. The Tenant has confirmed receipt of the Landlord's notice of hearing package and submitted documentary evidence. The Landlord states that she only just received the Tenant's evidence package the day before the hearing. I note that the Tenant filed her evidence late for the hearing on May 24, 2013. The Landlord seeks to exclude the Tenant's evidence because she has not had an opportunity to review and prepare for it. The Tenant was unable to provide a reasonable explanation of why her evidence packages were provided late. I note that the Tenant filed her application on March 6, 2013 and that there was a notation that the conference call and hearing process were explained as well as the rules of procedure regarding the submission of evidence. I find that with no reasonable explanation, that the Tenant's evidence would be prejudicial to the Landlord and order that it be excluded from this hearing.

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 this Tenancy began on April 1, 2011 and that the monthly rent was \$900.00. The Tenant paid a \$450.00 security deposit on March 16, 2011.

The Landlord seeks a monetary claim of \$2,808.17. This consists of \$450.00 for 15 days of rent from November 1 to 15, \$7.00 for a stop payment charge, \$224.00 for an estimate for replacement of a cracked window, \$183.17 for unpaid utilities, \$112.00 for cleaning charges, \$1,232.00 for new painting and the repair of a wall, a \$400.00 charge for the removal of a stained carpet and \$200.00 for the removal of damaged vinyl.

The Tenant stated that she was unaware of the broken glass, but would be willing to pay for it. The Landlord has provided an estimate of the charge, but states that the window has not yet been fixed and it is likely to cost more. The Tenant states that she paid the Landlord's father-in-law for the utilities. The Landlord disputes this. The Tenant stated that it was paid in cash, but is unable to provide any proof of payment. The Tenant states that she forgot to clean the oven. The Landlord has provided a copy of a receipt for \$112.00 for 4 hours of cleaning at \$25.00 per hour. The Landlord also relies on a video on a compact disc as well as photographs taken of the rental. The Landlord has provided copies of emails that she sent to the Tenant over damages and the state of the rental. The Tenant also states that the carpets were very worn and does not recall a stain in the carpet. The Landlord has provided a detailed list of deficiencies given to them by the Tenant for the condition of the rental unit from the beginning of the Tenancy. The list refers to worn countertops, ants, kitchen flooring 3x3x3 square, burn on floor in kitchen, stain on faucet, burn on the hallway carpet and burn on the master bedroom carpet. The Landlord also refers to the photographs and video of the rental. The Tenant dispute the Landlord's claims and states that there was no damage to the kitchen and bathroom vinyl. The Landlord states that she is only seeking the removal charges for the carpet in the living room and bedrooms as well as the removal charges of the vinyl in the kitchen and the bathroom.

The Tenant seeks a monetary claim of \$900.00 for the return of double the security deposit (\$450.00). The Tenant states that the tenancy ended on October 31, 2012 and that the forwarding address in writing was provided to the Landlord on November 3, 2012. The Landlord disputes this stating that the Tenant gave no written notice to vacate and that verbal notice was given to vacate on November 15, 2012 on October 10, 2012. The Landlord states that the Tenant notified her on October 25, 2012 that she found a new rental and would be vacating by the end of the month.

Analysis

I accept the direct testimony of both parties and find that the Tenant has failed to establish a claim for the return of double the security deposit. 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation

to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Both parties agreed that the tenancy ended on November 5, 2012 and the Landlord was able to re-rent the unit on December 1, 2012. The Tenant stated in her direct testimony that the forwarding address in writing was given on November 3, 2012. The Landlord has disputed this stating that no written forwarding address was ever sent and only received the Tenant's address with the notice of hearing package for this Application. The Tenant was unable to provide any supporting evidence to show that the forwarding address in writing was given to the Landlord. I find on a balance of probabilities that the Tenant has failed to establish a claim for the return of double the security deposit, but is entitled to the return of the original \$450.00 security deposit. The Tenant is also entitled to recovery of the \$50.00 filing fee.

As for the Landlord's monetary claim, I find that the Landlord has only established a claim in part. The Landlord's claim for \$450.00 for part November rent and the \$7.00 for a stop payment has been established. I prefer the evidence of the Landlord over that of the Tenant and find that the notice to end tenancy was improperly given. This is supported by the additional \$450.00 cheque for the ½ month's rent for November and the stop payment charge of \$7.00 which was incurred. I also find that the Landlord has established a claim for unpaid utilities of \$183.17. Although the Tenant has stated that a cash payment was made to the Landlord's father-in-law, I prefer the evidence of the Landlord over that of the Tenant as the Tenant has failed to provide any type of proof of payment. The Landlord has been successful in this portion of the claim. The Landlord has established a claim for cleaning of \$112.00 which is supported by the invoice for cleaning as well as the photographs and video of the condition of the rental. The

Tenant admitted in her direct testimony that she “forgot to clean the oven” and has not provided any details to the contrary as submitted by the Landlord. I accept the undisputed testimony of the Landlord and find that the \$1,232.00 invoice for wall repairs and painting (\$400.00 for wall repairs and \$700.00 for painting 3 rooms) as the Tenant has confirmed that she placed stickers in one of the rooms without permission and did not remove them as depicted in the photographs. However, the Landlord has failed to provide any additional information regarding the need to re-paint two additional rooms. On this basis, I grant the Landlord recovery of claims for the one room only with the stickers. The Landlord is granted the \$400.00 wall repair charge and 1/3 of the \$700.00 painting cost as \$233.33 for the one room. On the Landlord’s claim for recovery of \$400.00 for carpet removal costs and \$200.00 for vinyl removal costs, I find that the Landlord has established a claim. I find on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant. Although the Tenant disputes the claim, I note that the Tenant stated that the stain was there at the beginning of the Tenancy, I find that this was not included in the details issues that the Tenant provided to the Landlord at the beginning of the Tenancy. The Landlord has provided photographs of damaged vinyl and stained carpeting. The Landlord has been successful for the \$600.00 combined claim for removal costs only. The Landlord has established a total monetary claim of \$1,873.50. The Landlord is also entitled to recovery of the \$50.00 filing fee.

The Landlord has established a total monetary claim for \$1,923.50. The Tenant has established a total monetary claim for \$500.00. In offsetting these amounts, I find that the Landlord is entitled to a monetary order for the difference of 1,423.50. 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 \$1,423.50.

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: June 4, 2013

Residential Tenancy Branch

