



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on November 1, 2011 and ended on September 30, 2012. The tenants were obligated to pay \$750.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$375.00 security deposit. A move in condition inspection report was done upon move in, but not at move out.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

On the first hearing date the landlord made reference several times that they had "lots of other evidence" to support their claim but did not submit it. The landlord wished to submit further evidence. The tenant was adamantly opposed and felt "they came to the dance without a ticket". The landlords are the applicants and as such must be prepared to proceed with their application on the date of hearing. I did not grant the landlords request to submit further evidence however the landlords submitted further documentary evidence on March 14, 2013.

3.5 Evidence not filed with the Application for Dispute Resolution

a) Copies of any documents, photographs, video or audio evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and **must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding** as those days are defined the “Definitions” part of the Rules of Procedure.

Based on the above I have not accepted or considered the evidence submitted on March 14, 2013.

The landlords are the sole applicants in this matter; I address the landlord’s claims and my findings around each as follows.

First Claim – The landlords are seeking \$75.00 for unpaid rent. The tenant did not dispute this claim. The landlords provided documentary evidence to support this claim. The landlords are entitled to \$75.00.

Second Claim – the landlords are seeking \$358.30 for lock replacement. The landlords stated that the resident manager was requested by the police to remove the locks or they would kick the door in as the police were responding to an attempted suicide in the subject unit. The tenant stated that the “whole thing was getting blown out of proportion; it wasn’t that big of a deal”. The landlords did not provide any evidence that the tenants would not allow the resident manager in or how the lock was damaged. The landlords were silent as to whether the resident manager did or did not have a key. In addition, the landlords did not present evidence as to why the lock was damaged if the resident manager was using tools to dismantle it. The landlords claim brought up more questions than it answered. The landlords were vague and unclear as to the details of this particular issue. Based on the inconsistent and insufficient evidence before me, I dismiss this portion of the landlords claim.

Third Claim – The landlords are seeking \$160.00 for cleaning the unit. The landlords submitted a receipt to support this claim. The tenant stated that “I thought I left it pretty clean”. The tenant later stated “it wasn’t perfect but it was okay”. Based on the evidence before me, I find that the landlord has met the burden of proof, on the balance of probabilities that the landlord is entitled to \$160.00.

Fourth Claim – The landlords are seeking \$552.32 for the replacement of the apartment building entry door. The landlords provided a receipt to support this claim. The resident manager observed that the tenant had damaged the door in a fit of rage.

The landlords stated that the tenant eventually acknowledged this once he had calmed down. The tenant did not dispute that he had damaged the door. The tenant stated that he was the “unlucky one” who happened to open the door and it broke. Based on the evidence before me and the tenants own acknowledgement of the damage, I find the landlord has met the burden of proof, on the balance of probabilities that the landlords are entitled to \$552.32.

Fifth Claim – The landlords are seeking \$345.00 for the replacement of a closet door and \$800.00 to repair wall damage.

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.

The landlords stated that they have not undertaken the wall repairs as of yet and therefore have not incurred any out of pocket costs. As for the door replacement the landlords only provided an estimate and not an actual receipt. They have not provided sufficient evidence to claim for this portion of their claim and accordingly I dismiss this portion of their application.

Conclusion

In summary, the landlord has been successful in the following claims:

Unpaid Rent	\$75.00
Suite Cleaning	\$ 160.00
Apartment Building Door	\$552.32
Filing Fee	\$50.00
	\$
	\$
Total:	\$837.32

The landlord has established a claim for \$837.32. I order that the landlord retain the \$375.00 deposit. I grant the landlord an order under section 67 for the balance due of \$462.32. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 7, 2013

Residential Tenancy Branch