



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, MND, FF

Introduction

This hearing was originally convened on May 1, 2013, as a result of the tenants' successful application for review regarding the Decision and monetary order dated February 19, 2013, in which the landlord was granted a monetary order in the amount of \$2000 based upon her application for dispute resolution under the Residential Tenancy Act (the "Act"). In her original application for dispute resolution, the landlord sought authority to retain the tenants' security deposit, an order of possession for the rental unit due to unpaid rent, monetary order for unpaid rent and damage to the rental unit, and for recovery of the filing fee.

The tenants applied for a review based upon their contention that they had evidence that the Decision of February 19, 2013, was obtained by fraud.

The tenants were granted a review hearing in a Decision by another Arbitrator dated April 3, 2013, and the Decision and monetary order of February 19, 2013 were suspended pending the review hearing. Although this review hearing was convened on May 1, 2013, the length of the evidentiary presentation required that the hearing be adjourned to the present date.

At the review hearing and the adjourned review hearing, the parties appeared and the hearing process was explained. It was explained to the parties that the purpose of the review hearing was to have another hearing on the landlord's original application for dispute resolution, where the landlord would be under the same burden of proof to support her application as if the original hearing had not occurred.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issue regarding the service of the application or the other's evidence.

I have reviewed all evidence and testimony 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.

Preliminary issue-The landlord in her application requested an order of possession for the rental unit and a request to retain the tenants' security deposit; however the tenancy had ended well before the landlord filed her application and therefore I excluded her request for an order of possession. Additionally the matter of the tenants' security deposit had been dealt with another dispute resolution hearing on the tenants' application. I therefore excluded her request to retain the tenants' security deposit.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on June 1, 2012, and monthly rent was \$600. The landlord said the tenancy ended on August 29, 2012, and the tenants claimed the tenancy ended on August 24, 2012.

The landlord's monetary claim as specified in her application is \$2000, comprised of flooring replacement for \$800, patching and painting of walls for \$400, cleaning for \$600, garbage removal for \$125, stove knob replacement for \$25, and the filing fee of \$50.

The landlord's relevant documentary evidence included 59 photographs of the rental unit.

The landlord submitted that the tenants left the rental unit in a damaged state and left their personal property in the rental unit, refusing to meet with her in order that they could remove those belongings.

The landlord claimed that she is entitled to monetary compensation as listed in the details of dispute in her application due to damages committed by the tenants.

In response to my question, the landlord stated that there was a condition inspection report, but that it was not provided into evidence.

The landlord stated that she issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") at the beginning of August when the tenants failed to pay rent; however a copy of the Notice was not supplied into evidence.

The landlord confirmed that she changed the locks to the rental unit, preventing the tenants from entry either on August 26th or 27th, as the tenants failed to pay rent that month. The landlord contended that she also changed the locks because the tenants refused to clean the rental unit.

In response, the tenants denied receiving a 10 Day Notice and further contended that they arrived at the rental unit on August 24, to find out that their keys did not work. The tenants claimed that the landlord refused to allow further entry into the rental unit to clean or remove their personal property unless they paid \$600.

The tenants said that their phone records, submitted into evidence, show that the landlord never phoned them; however, the records show that they repeatedly phoned the landlord, but she refused to meet with them.

The tenants denied damaging the walls and floor, or the stove knob.

The tenants stated that the photos were taken after they were locked out of the rental unit.

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, which falls in sections 7 and 67, 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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, although the landlord stated that there were condition inspection reports, none were submitted into evidence. Further there was also no other independent record of the condition of the rental unit at the start of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's lack of evidence fails to meet the burden of proof.

Additionally, had I not made the decision to dismiss the landlord's monetary claim due to lack of a record of the state of the rental unit at the beginning of the tenancy, I would still dismiss the monetary claim as the landlord provided no proof that she has suffered a financial loss, as would be shown through receipts or invoices.

I further could not rely on the landlord's photographic evidence of the tenants' belongings or debris as I find the landlord illegally changed the locks to the rental unit, depriving the tenants of a chance to clean the rental unit. The landlord said she attempted to contact the tenants and the tenants submitted that the landlord refused to let them in. In a case such as this where the evidence consists of disputed verbal testimony, the person bearing the burden of proof, the landlord, must submit further substantiated evidence, which the landlord did not.

The landlord's remedy if a tenant fails to pay rent is to issue the tenants a 10 Day Notice to End Tenancy for Unpaid Rent and if the tenants fail to vacate, the landlord is required to file for dispute resolution seeking an order of possession for the rental unit, not change the locks.

I therefore find the landlord has submitted insufficient evidence to prove her monetary claim and I therefore dismiss her application for flooring replacement for \$800, patching and painting of walls for \$400, cleaning for \$600, garbage removal for \$125, stove knob replacement for \$25, and the filing fee of \$50.

Conclusion

The landlord's application is dismissed.

As I have dismissed the landlord's application requesting a monetary order in the amount of \$2000, I set aside the Decision and Order of February 19, 2013, granting the landlord's application and a monetary award of \$2000. The monetary order issued on February 19, 2013, in favour of the landlord is now of no force or effect.

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: June 10, 2013

Residential Tenancy Branch

