



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, MNR, FF

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, 2008 and ended on February 28, 2013. The tenants were obligated to pay \$945.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$488.00 security deposit.

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.

I address the landlord's claims and my findings around each as follows.

First Claim- The landlords are seeking \$60.00 plus taxes for cleaning costs they incurred. The tenant did not dispute this claim. The landlord did not provide the amount of taxes for this cost. I find that the landlord is entitled to \$60.00.

Second Claim – The landlords are seeking \$125.00 for unpaid rent in the month of February as well as half a months' rent \$487.50 for loss of revenue for March 1-16, 2013. The tenant acknowledged the unpaid rent and that she did not give notice until

February 3, 2013. The tenant was apologetic and realized that she did not give notice in accordance with the Act. I find that the landlord is entitled to \$612.50.

Third Claim – The landlords are seeking \$1200.00 for the painting of the suite. The landlords stated that they conducted a move in and move out condition inspection report. The tenant denies that either was done. The landlords submitted an inspection report however it is incomplete and unsigned by the tenant at either move in or move out. The landlords concede that a certain amount of wear and tear is to be expected however they felt the unit had excessive damage. The tenant adamantly disputed the landlords' claims. The tenant stated that she received the unit in average condition and that there was some existing minor damage. It was explained in great detail to the landlords the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Fourth Claim – The landlords are seeking \$3700.00 to conduct repairs and renovations to the suite that they claim was a result of the tenants misuse and negligence. The landlords have not conducted that work at this time as they are awaiting the outcome of this hearing.

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 have not provided sufficient evidence to meet any of the above and therefore have not met the grounds as required. I dismiss this portion of the landlords' application.

The landlord is entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$722.50. I order that the landlord retain the deposit and accrued interest of \$489.22 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$233.28. 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: June 04, 2013

Residential Tenancy Branch

