



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, O, RR

Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent, to for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has also made an application for a monetary order for money owed or compensation for damage or loss, for an order for the Landlord to comply with the Act, regulation or tenancy agreement and to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties have attended the hearing by conference call and gave testimony. Neither party has submitted any documentary evidence.

The Tenant states that he was unaware of the Landlord's Application for dispute resolution and has not received the Landlord's notice of hearing package. The Landlord states that the Tenant was served in person on May 16, 2013 with the package. The Tenant disputes this. The Landlord states that the notice of hearing package was personally served, but has no proof of service. I find that as the Landlord has failed to provide any proof of service for the notice of hearing package that the Landlord's Application is dismissed with leave to reapply.

The Tenant states that the Landlord was served with the Tenant's notice of hearing package by posting it on the Landlord's door. The Landlord has confirmed receipt of the Tenant's notice of hearing package. Although the posting of the notice of hearing package is not an accepted form of service, the Landlord has acknowledged receiving the Tenant's Application package and has not voiced any objections and as such I find that the Landlord is deemed to have been served as no prejudice can be determined.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order for the Landlord to comply?

Is the Tenant entitled to an order to be allowed to reduce rent?

Background and Evidence

The Tenant states that he has resided at the rental unit for approximately 10 years. The Landlord disputes this stating that the Tenancy has only been for approximately 4 years. The Tenant states that there is a signed tenancy agreement, but has not provided a copy for the tenancy. The Landlord disputes this stating that there is no signed tenancy agreement. The Tenant stated that the monthly rent was \$400.00.

The Tenant seeks a monetary order for money owed or compensation for damage or loss for \$100.00. The Tenant states that the claim is for food costs because he had to go out to eat because of not having a stove/oven. The Tenant states that the claim amount was "off the top of my head" and not based upon any costs/receipts. Both parties confirmed that the Landlord removed the stove on Easter Sunday (March 31, 2013) after receiving an order to comply with Surrey by-Laws. Both parties also confirmed that the Landlord provided a hotplate in exchange for the removal of the stove/oven.

The Tenant seeks the replacement of a refrigerator. The Tenant states that the refrigerator has been compromised and leaks water and has had mold for approximately 2 years. The Tenant states that this was reported to the Landlord approximately 2 years ago and that the Landlord has ignored the numerous requests over the last 2 years. The Landlord disputes this stating that as of 2 months ago when the rental unit was visited that there was nothing apparently wrong with the refrigerator and the Tenant has never previously reported any problems.

The Tenant asks that the Landlord paint the rental unit as it has been approximately 10 years since his move-in and no painting has occurred during that time. The Landlord disputes this stating that the Tenant has only resided here for 4 years and that the rental was painted shortly before the Tenant moved in.

The Tenant seeks an order for repair of the kitchen cupboards as they have been broken for approximately 10 years. The Tenant states that the cupboards were broken

within the 1st month after he moved in 10 years ago and that the Landlord has ignored his 2 requests, 10 years ago and 2 years ago to have the cupboards repaired. The Landlord disputes this claim stating that approximately 2 months ago the rental unit was viewed and that there has been no apparent damage to the cupboards. The Landlord also states that no such requests have been made by the Tenant for this repair previously.

Analysis

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 Tenant is responsible as he has made the application. 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 their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The Tenant has failed to provide sufficient evidence to satisfy me of any requirements to replace a refrigerator, that painting was required or that the cupboards were broken. The Tenant's claims are disputed by the Landlord and the Tenant has not provided any supporting evidence to show these claims. The Tenant's claims for repairs/replacements of the refrigerator, painting and the cupboards have failed. These portions of the Tenant's claims are dismissed.

As for the Tenant's claims for \$100.00 in compensation for the loss of the stove/oven, I find that the Tenant has failed to provide sufficient evidence to satisfy me of any losses that have occurred. The Tenant's claim was "off the top of my head" and is not based upon any actual losses or any receipts or invoices. The Tenant has failed to provide any type of reasoning for this amount. However as both parties have confirmed that the Landlord removed the stove/oven in response to a city by-law order and replaced it with a hotplate, I find that the "facilities" or the stove/oven that was included in the original tenancy was removed. The Tenant suffered a loss of "facilities". The Tenant still has access or the use of a hotplate. I find that the Tenant has established a claim for a nominal award of \$25.00 per month which is equal to approximately 6% of the \$400.00 monthly rent. As this loss occurred on March 31, 2013, I find that the Tenant has suffered a loss of \$75.00 (\$25.00 X 3 months-April, May and June). The Tenant has established a monetary claim of \$75.00. The Tenant is granted a monetary order for \$75.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Tenant has also established a right to a reduction in rent as it is improbable that the Landlord may replace the stove/oven in the rental unit which would be contrary to the city by-law order. On this basis, until there is a change in the circumstances (stove/oven) of this tenancy, I order that the monthly rent of \$400.00 be reduced to \$375.00.

Conclusion

The Landlord's Application is dismissed with leave to reapply.

The Tenant is granted a monetary order for \$75.00.

The Tenant is granted an order reducing rent to \$375.00 per month.

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 12, 2013

Residential Tenancy Branch

