



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by both landlords and the male tenant.

During the hearing the parties confirmed that the tenants had paid outstanding utility charges and as such the landlords reduced their claim by the amount of utility bill of \$91.55. I amend the landlords' Application to reduce the amount of the claim by this amount.

The tenant testified that he had not received the landlords' evidence. The landlords testified the tenant was served with their evidence on June 27, 2013. The landlords stated that he placed the evidence near the tenants' mail box in the common area of the residential property.

Section 88 states that all documents that are required or permitted under the Act to be given or served on a person must be given or served:

- a) By leaving a copy with the person;
- b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- c) By sending a copy by ordinary or registered mail to the address at which the person resides or, if the person is a landlord to the address at which the person carries on business as a landlord;
- d) If the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- e) By leaving a copy at the person's residence with an adult who apparently resides with the person;
- f) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- g) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

- h) By transmitting a copy to a fax number provided as an address for service by the person to be served;
- i) As ordered by the director under Section 71(1);
- j) By any other means of service prescribed in the regulations.

I accept the landlords attempted to serve the tenants with the evidence, however, as the landlords failed to use any of the acceptable methods of service noted in Section 88 I find I cannot consider the landlords' documentary evidence.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on November 1, 2011 as a 1 year fixed term tenancy that converted to a month to month tenancy on November 1, 2012 for a monthly rent of \$1,025.00 due on the 1st of each month with a security deposit of \$492.50 paid.

The parties agree the landlords have returned a total of \$177.21 of the security deposit and that they still hold \$315.29. The amount retained is the amount of the landlords' total claim including the filing fee for this Application.

The landlords submit that on March 31, 2013 the tenants vacated the rental unit after the parties had completed a move out condition inspection. The landlords testified that later that day after the new tenants took possession of the rental unit a friend of the new tenant used the toilet and found it was not flushing properly.

The landlords further testified that the new tenant later used the toilet and found the same problem; specifically that the flushing action was very slow. In addition the new tenant complained the following to the landlord because the toilet would not flush at all and in fact started to overflow.

The male landlord testified that he immediately investigated the problem and determined the toilet required replacement. After replacing the toilet the landlord broke up the original one and discovered two or three lemons in the trap. The male landlord submits that he cannot specifically recall how many lemons were there.

The tenant submits that neither he nor any other person that was allowed access to the rental unit put any lemons into the toilet, including his wife and mother.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the burden is on the landlord to provide evidence to establish their claim and the tenant disputes any responsibility for the blocking of the toilet, it is incumbent on the landlord provide some form of evidence that will corroborate that this tenant or a person permitted in the rental unit by the tenants place lemons in the toilet.

While I accept that the landlord did find lemons in the toilet, I find the landlord has failed to provide any direct or corroborating evidence that it was this tenant or another person allowed in the unit by the tenants who placed the lemons in the toilet.

Conclusion

For the reasons noted above, I dismiss the landlords' Application in its entirety.

I find the tenant is entitled to return of the balance of the security deposit pursuant to Section 67 and I grant a monetary order in the amount of **\$315.29**. This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: July 9, 2013

Residential Tenancy Branch

