



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent, utilities, disposal costs and repairs. The landlord was seeking to retain the security deposit in satisfaction of the claim.

Despite being served by registered mail, the respondents did not appear and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for rent and damages?

Background and Evidence

The landlord testified that the tenancy began as a fixed term tenancy July 1, 2011 and ended with insufficient notice from the tenant effective May 31, 2013. The rent was \$1,800.00 per month. A security deposit of \$675.00 was paid.

The landlord testified that the tenant failed to pay rent for May, 2013 and owes arrears of \$1,800.00.

The landlord testified that the tenant also failed to pay charges for water and garbage collection and owes arrears of \$1,392.00. The landlord acknowledged that the tenancy agreement did not include a written term of the tenancy that specifically requires the tenant to pay for the water and garbage collection, but stated that there was a verbal understanding between the landlord and the tenant. According to the landlord, this is confirmed by the fact that the tenant had previously paid for a portion of these utilities during their tenancy. The landlord testified that the tenant suddenly refused to pay and the landlord is seeking compensation.

The landlord is also claiming \$363.27 for the cost of repairing a broken glass fireplace door, \$179.00 for a broken air conditioning unit and \$226.00 for debris removal.

According to the landlord, the evidence to support these claims, including copies of receipts and copies of the move-in and move-out condition inspection reports, had been submitted by fax, late for the hearing. Although this evidence should have been on file, it was not located in the landlord's claim file. In any case, the landlord confirmed that this evidence had not been properly served on the respondent in time for the hearing. Therefore the evidence would not be accepted or considered because of the failure to serve the respondent in accordance with the Act and the Rules of procedure.

The total monetary claim is for \$3,960.27 plus the \$50.00 cost of the application.

Analysis

With respect to \$1,800.00 rent owed for May 2013, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement. In this instance, I find that the tenant did not pay the rent when it was due. Accordingly, I find that the landlord is entitled to \$1,800.00 for rental arrears.

In regard to the landlord's claim for utilities, I find that section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise under the Act or a tenancy agreement.

Determining what the parties had agreed upon with respect to whether a utility is included in the rent, pertains to a dispute based on an interpretation of specific terms that were mutually agreed-upon in the tenancy agreement between this landlord and this tenant. I find that, in the absence of a copy of the written tenancy agreement, I am unable to determine whether these utility arrears relate to services that are the responsibility of the tenant to pay for by contract.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Accordingly, I find that the landlord's claim for utility arrears is not sufficiently proven and must therefore be dismissed.

With respect to the landlord's other claims for damages and loss, it is important to note that in a claim for loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement Act.

Section 37(2) of the Act states that, upon vacating a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear.

I accept the landlord's undisputed verbal testimony that the tenant left materials to be disposed of, for which the landlord incurred expenditures of \$226.00.

In regard to the repairs to the fireplace and the air conditioner, I find that the landlord has not sufficiently met the burden of proof to justify granting an order for monetary compensation and therefore the claims must be dismissed.

Accordingly I find the landlord is entitled to compensation of \$2,076.00 comprised of rent of \$1,800.00, disposal costs of \$226.00 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$900.00 security deposit in partial satisfaction of the claim, leaving \$1,176.00 still outstanding.

I hereby grant a monetary order in favour of the landlord for \$1,176.00. This order must be served on the tenant and may be enforced in Small Claims Court if necessary.

Conclusion

The landlord's application is partly successful and the landlord is granted a monetary order for rent, damages and the cost of the application.

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: September 30, 2013

