



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing was scheduled to hear matters pertaining to an Application for Dispute Resolution filed on July 3, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site, or property; for unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlord signed into the proceeding six minutes late and at that time I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should this application be dismissed with or without leave to reapply?

Background and Evidence

The parties confirmed they entered into a fixed term lease that began on September 1, 2011, and switched to a month to month tenancy after six months. Rent was payable on the first of each month in the amount of \$1,900.00 and on September 1, 2011 the Tenant paid \$950.00 as the security deposit. No move in or move out condition inspection forms were completed. The Tenant vacated the property on June 1, 2013,

after being served a 2 Month Notice for Landlord's use sometime in late March or early April 2013.

The Landlord testified that the Tenant failed to clean the house and left damages to the fridge, stains on the carpets, writing on the wall, and unpaid utilities. He is claiming a total amount of \$1,130.00.

The Tenant testified that even though they requested a walk through one did not happen until two weeks after they moved out on June 13, 2013. His wife and the Landlord's wife did the walk through and they discussed how the house was well kept by the Tenants and the Landlord's wife requested their forwarding address. At the time of the walk through the Landlord had already moved back into the unit. They sent their forwarding address to the Landlord on approximately June 16, 2013.

The Tenant does not dispute the claim for \$126.00 in two months of utilities for April and May 2013. He also does not dispute the claim for damage caused to the fridge as there were some cracks in the shelves and a burnt out light bulb which he estimates to be \$50.00 per shelf. He disputes the rest of the Landlord's claim and notes that there was no evidence received by the Landlord to support their claim.

The Landlord confirmed that he did not submit evidence to the *Residential Tenancy Branch*. He did however send photos to the Tenant prior to making his application for dispute resolution. He confirmed receipt of the Tenant's forwarding address but could not confirm the exact date it was received.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

The Tenant has accepted responsibility for the unpaid utilities in the amount of \$126.00 and for two cracked shelves at \$50.00 each. Therefore, I award the Landlord monetary compensation for unpaid utilities and damage to the fridge in the amount of **\$226.00** (\$126.00 + \$50.00 + \$50.00).

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Landlord which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing.*

In this case the Landlord is seeking compensation for damages and unpaid utilities, however he did not provide evidence, such as a condition inspection report form, to support his claims that the damages were caused during the tenancy. Furthermore, there is no evidence before me to prove the amounts being claimed such as utility bills or receipts for repairs.

Based on the above, I find there to be insufficient evidence to prove the test for damage or loss and I dismiss the balance of the Landlord's claim, without leave to reapply.

The Landlord has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$10.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

| | |
|--|--------------------------|
| Unpaid Utilities and fridge damage | \$226.00 |
| Filing Fee | <u>10.00</u> |
| SUBTOTAL | \$236.00 |
| LESS: Security Deposit \$950.00 + Interest 0.00 | <u>-950.00</u> |
| Offset amount due to the TENANT | <u>(\$714.00)</u> |

I HEREBY ORDER The Landlord to return the security deposit balance of **\$714.00** to the Tenant forthwith.

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$714.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: October 01, 2013

Residential Tenancy Branch

