



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served with the notice of hearing package.

The Landlord clarified at the beginning of the hearing that the monetary claim is being lowered from \$2,000.00 to \$806.55.

The Landlord states that the documentary evidence was sent by standard mail to the Tenant. The Tenant states that she did not receive the Landlord's documentary evidence package. The Landlord is unable to provide any proof of service other than to state that he did send the package to the address by Canada Post and has not received a return package. I find as the Landlord is unable to provide sufficient evidence of proof of service in accordance with the Act, that the Landlord's documentary evidence shall not be admissible for this hearing. The Landlord was advised that he could provide verbal testimony regarding the documentary evidence.

The Tenant also stated that she did not provide a copy of her documentary evidence to the Landlord. The Landlord has confirmed this in his direct testimony. The Tenant states that the documentary evidence is a copy of the condition inspection report that was obtained from the Landlord after the move-out. The Landlord did not have any objections to the Tenant's submission of documentary evidence.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The Landlord seeks a monetary claim for \$806.55 and to retain the \$650.00 security deposit to offset the claim. The claim consists of \$200.00 for damages that the Landlord states were agreed upon by the Tenant during the condition inspection report for the move-out on July 29, 2013 as shown by the Tenant's copy of the completed condition inspection for the move-out. The Tenant has confirmed that she agreed to the \$200.00 deduction from the \$650.00 security deposit in her direct testimony. The Landlord also seeks \$189.00 for the replacement of a thermostat that was damaged. The Tenant disputes this claim stating that the thermostat was in working condition when she vacated the rental unit. The Landlord states that the damage to the thermostat was not noticed until after the Tenant's move-out and was noted by a house inspector. The Tenant states that she was present during the inspection, but was not aware of the final report provided by the house inspector. The Landlord also seeks \$176.05 for the damage caused to the refrigerator and stove. The Tenant disputes this claim stating that the refrigerator and stove were in working condition when she vacated the rental unit. The Landlord states that the damage to the refrigerator and stove were not discovered until after the move-out inspection by the house inspector. The Landlord also seeks \$210.00 for management fees for the Landlord's property management fees for this hearing. The Landlord also seeks \$31.50 for a copy of the condition inspection report provided to the Tenant upon request. The Landlord states that the Tenant, J.D. called and requested a duplicate copy of the condition inspection report and verbally consented to the Landlord's property management request for \$5.00 per page for 6 pages totalling, \$31.50 with GST. The Tenant, T.C. states that Tenant, J.D. did attend the Landlord's property management office requesting a copy of the condition inspection report and took the duplicate copy of the inspection report without paying for it. The Landlord's Agent states that the \$5.00 per page for duplicate copies is part of the signed tenancy agreement. Both parties confirmed that the Landlord did provide a copy of the condition inspection report to the Tenant at the end of the tenancy. The Tenant also states that none of the issues being claimed by the Landlord are noted on the completed condition inspection report.

Analysis

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (\$210.00 hearing fee by agent) is dismissed.

The monetary claim of \$200.00 has been established by the Landlord based upon the Tenant's direct testimony confirming her consent to the deduction for damages from the security deposit.

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.

I find that the Landlord has failed to provide sufficient evidence to satisfy me that damage occurred due to the action or neglect of the tenant. The Tenant has disputed the Landlord's claims. The Landlord has failed to provide sufficient evidence that damage was caused which is contrary to the completed condition inspection report which was completed on July 29, 2013 by both parties. For example the Landlord did not include a copy of the home inspector's report or a letter confirming damage at the time of the inspection by the inspector. The Landlord's claim for damages for the thermostat, refrigerator and stove are dismissed.

As for the Landlord's claim that the Tenant took a duplicate copy of a condition inspection report after agreeing the fee, I find on a balance of probabilities and the undisputed testimony of the Landlord that a claim has been established for the \$31.50 charge. The Tenant, T.C. confirmed in her direct testimony that a copy of the condition inspection report was received, but that it was lost. Tenant, T.C. confirmed in her direct testimony that the Tenant, J.D. called the Landlord and requested a duplicate copy and agreed to the Landlord's request for duplicate copy fees. Both parties confirmed that when the Tenant, J.D. attended that the Tenant took the offered copy and refused to pay the charge.

The Landlord has established a total monetary claim for \$231.50. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$281.50 from the \$650.00 security deposit in satisfaction of the claim and I order that the Landlord pay the difference of \$368.50 to the Tenant. The Tenant is granted a monetary order for \$368.50 for the return of the remaining portion of the security deposit.

Conclusion

The Landlord may retain \$281.50 from the security deposit.
The Tenant is granted a monetary order for \$368.50.

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: November 20, 2013

Residential Tenancy Branch

