



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlord to return the tenant’s personal property.

The tenant, a witness for the tenant, the landlord and an agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the documentary evidence from the landlord and that she had the opportunity to review that evidence prior to the hearing. The tenant confirmed that she did not submit documentary evidence in support of her application. The tenant stated that she did submit a list of items being claimed when she submitted her application.

Settlement Agreement

During the hearing, the parties mutually agreed to settle on the return of the tenant’s bird cage, which includes the equipment inside the bird cage. By mutual agreement, the parties agreed that the landlord will deliver the tenant’s bird cage which the landlord stated has not been opened to the tenant by **Thursday, November 7, 2013 at 7:00 p.m.** As a result of this mutually settled agreement, the bird cage will not be considered further in this Decision.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. Monthly rent in the amount of \$1,400.00, which included hydro, was due on the first day of each month. The tenant has claimed for the following:

1. Brand new carpet cleaner	\$285.00
2. Christmas decorations	\$180.00
3. Son's tent	\$120.00
TOTAL	\$585.00

Regarding item #1, the tenant confirmed that she did not submit any photographic evidence of the carpet cleaner or receipts to support the value of the carpet cleaner being claimed. The landlord submitted in their documentary evidence that all items left behind in the rental unit after the tenant vacated the rental unit had a value assessed by the landlord as well below \$500.00. The landlord confirmed that a carpet cleaner was left behind by the tenant but that it was not new and was "full of pet hair and dirty water and smelled". The tenant's witness, FW, stated that the tenant bought the carpet cleaner brand new just before the tenant moved but was unsure where the tenant bought it from. Witness FW stated "maybe WalMart" and was unsure of the value of the carpet cleaner and guessed "\$200.00 or \$250.00". The tenant confirmed that she used the carpet cleaner during the tenancy.

Regarding item #2, the tenant testified that she did not have any photographs or receipts to support this portion of her claim. The landlord denied that any Christmas decorations were left in the rental unit. The tenant's witness, FW, stated that he was with the tenant in November and December when the tenant purchased Christmas decorations on at least three occasions. Witness FW could not recall the dates or the amounts that the tenant spent but guessed that she spent "\$80.00" during the hearing and could not describe where in the rental unit the tenant stored her alleged Christmas decorations.

Regarding item #3, the tenant withdrew this portion of her claim during the hearing. The tenant did not submit any documentary evidence in response to this portion of her claim.

Analysis

Based on the landlord's documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items #1 and #2 – The tenant testified that she left her carpet cleaner and Christmas decorations in the rental unit after vacating the rental unit. The tenant failed to provide any photographs or receipts to support this portion of her monetary claim. I find that the tenant's witness FW, was not a credible witness as he was unable to recall specific dates, amounts, or other details such as where the carpet cleaner was purchased.

Section 25 of the *Residential Tenancy Regulation* states that the landlord may dispose of the property if the landlord reasonably believes that the property has a total market value of less than \$500.00 or the storage of the property would be unsanitary or unsafe. Based on the above, I find that the tenant has failed to prove that the landlord has breached the *Act*, regulation or tenancy agreement and has failed to prove the value of the items being claimed. I find that the landlord's assessment that the personal items left behind by the tenant had a market value of less than \$500.00 **is reasonable**, and that storing a carpet cleaner with "dirty water, full of pet hair and smelled" would be

unsanitary. As a result, I find that the landlord disposed of the tenant's personal items in accordance with section 25(2) of the *Residential Tenancy Regulation*. Given the above, **I dismiss** these portions of the tenant's claim due to insufficient evidence, without leave to reapply.

Item #3 – The tenant withdrew this portion of her claim during the hearing. As a result, I do not find it necessary to consider this portion of tenant's claim.

Conclusion

I order the parties to comply with the terms of their settled agreement described above.

I dismiss items #1 and #2 of the tenant's claim due to insufficient evidence, without leave to reapply. Item #3 was withdrawn by the tenant during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2013

Residential Tenancy Branch

