



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double their security deposit and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on February 1, 2000 and ended on August 31, 2011. The tenants were obligated to pay \$1170.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$575.00 security deposit.

The relationship between these two parties is an acrimonious one. Both parties displayed a level of hostility towards each other that required me to caution each of them of their conduct during the hearing.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I first address the tenant's claims and my findings around each as follows.

Tenants First Claim – The tenants are seeking \$85.00 per hour X 30 hours = \$2050.00 for lost time, office supplies parking, gas etc. The Act does not prescribe for the recovery of litigating ones claim and I therefore dismiss this portion of the tenants' application.

Tenants Second Claim- The tenants are seeking the return of double the security deposit plus interest accrued. The tenants stated that they provided their forwarding address in writing to the landlord on September 15, 2011 by registered mail. The tenant stated that landlord did not claim the letter. The landlords' property manager stated that the forwarding address had been incorrectly sent to him when he was out of the country. The property manager stated that he was not aware the tenants sent him the package until the tenants filed a subsequent claim in 2013. The landlord stated that she had to track down the tenant to get his address as they did not provide it to her in writing. The landlord stated that she had issued a cheque returning the security deposit plus interest in November 2011.

The landlord stated that the tenant did not cash the cheque until May 2012 and at that point was un-cashable as the cheque had become "stale dated". The tenant acknowledged that he had received the amount but did not provide explanation as to why he waited so long to cash the cheque. The landlord stated that she was not aware that the tenant had not cashed the cheque until the tenant filed for dispute resolution in July 2013. The property manager stated that he was not the landlord and the issue was addressed and clarified by an Arbitrator on July 23, 2013.

The Arbitrator made a finding (file 807321) that the tenants were fully aware of who the landlord was and that they had not served the appropriate party their forwarding address.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based on the finding of the Arbitrator and the testimony of both parties I find that the tenants did not provide their forwarding address to the landlord as required above and

have extinguished their right to make a claim for it, accordingly I dismiss this portion of the tenants application.

The landlord is entitled to retain the security deposit and any interest accrued.

Tenants Third Claim – The tenants are seeking \$1000.00 compensation in damages for harassment, intimidation, abuse of process due to the landlord filing a cross application.

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.

The tenants have failed to satisfy me on all four grounds as listed above. I do not find the actions of the landlords for exercising their right to file a cross application to be of a harassing, intimidating or an abusive act and therefore dismiss this portion of the tenants application.

The tenants have not been successful in their application.

I first address the landlords' claims and my findings around each as follows.

Landlords First Claim- The landlord is seeking \$80.00 per hour X 25 hours = \$2000.00 for their time to prepare for this hearing. As stated earlier in this decision the Act does not prescribe for the recovery of costs for litigating ones claim and I therefore dismiss this portion of the landlords' application.

Landlords Second Claim – The landlord is seeking the recovery of \$2504.00 to remediate the suite back to a rentable condition. The landlord provided receipts of the costs incurred. The tenant adamantly opposes the landlords claim. The tenant stated that the work was conducted by a friend of the landlords and the costs were "padded". I do not accept the claim as made by the landlord for the following reasons; the disputing testimony of the tenant and the lack of evidence depicting the unit at move in versus move out. In addition this was an eleven year tenancy. The landlord is seeking recovery

costs of painting and some carpeting. It is reasonable to expect that the landlord would need to repaint and possibly replace carpet after such a length of time. The Residential Tenancy Policy Guidelines Section 40 "Useful Life of Building Elements" outlines that many of the landlords' items claims have exceeded their "shelf life". Based on all of the above I dismiss this portion of the landlords' application.

As neither party was completely successful in their application I decline to award either the recovery of the filing fee and each must bear that cost.

Conclusion

The landlord is entitled to retain the security deposit and any interest accrued.

The tenants' application is dismissed in its entirety without leave to reapply.

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: December 05, 2013

Residential Tenancy Branch

