



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes MND, MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The Landlord has filed an application 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. The Tenants have also made an application for a monetary order for owed for compensation for damage or loss, for return 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 and the submitted evidence of the other party, I am satisfied that both parties have been properly served.

Due to a lack of time the hearing was adjourned to a continuation date of November 27, 2013. Both parties have been informed that a new notice of an adjourned hearing letter shall be sent to the confirmed addresses on each of the party's applications. On November 27, 2013 the hearing continued with both parties.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that there was no signed tenancy agreement and that the tenancy ended on May 31, 2013. Both parties also agreed that the Landlord received the Tenant's forwarding address in writing on July 11, 2013 and currently holds a \$250.00 security deposit paid by the Tenant. No condition inspection reports for the move-in or the move-out have been completed.

The Landlord seeks a monetary claim for \$1,162.50. This consists of \$500.00 in labour and \$232.48 for the materials to repair the rental unit, \$130.40 for the replacement of two damaged closet doors and two bedroom doors, \$155.40 for repair of mahogany wood that was painted by Tenants, \$35.00 to replace a broken glass window in the bedroom and \$75.00 to replace a screen door. The Landlord relies on photographs and her written statements. The Tenant disputes the Landlord's claims stating that the hours of labour required seem excessive in the circumstances. The Tenant also states that the rental unit was left clean and has submitted a DVD video as evidence in support of this claim.

During the hearing, the Landlord clarified that she was withdrawing the claims for \$130.40 to replace 2 closet doors and the claim of \$155.40 for 2 bedroom doors as the cost for these claims have not been incurred as the doors were not replaced. As such no further action is required for these portions of the Landlord's claim.

The Tenant seeks a monetary claim for \$1,160.00. This consists of \$250.00 for the return of the security deposit, \$50.00 for the cost of the purchase of a used washing machine, \$60.00 for recovery of monies for going to a Laundromat over a 3 month period, \$600.00 equal to one months rent as compensation for carbon monoxide leaking into the rental unit 20 times over a 9 year tenancy which required them to vacate the rental unit for 3 hours at a time on each occasion and \$200.00 for the cost of purchasing a heater and an air conditioner that was bought at the beginning of the tenancy of 9 years. The Landlord disputes the claims made by the Tenant stating that at no time were they informed of any problems with the washing/drying machines, of any carbon monoxide leaks. The Landlord also states that at no time was permission given to the Tenants to purchase a heater/air conditioner for the rental.

Analysis

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.

In the case of the Landlord, I find that the Landlord has failed to establish a monetary claim. Although the Landlord has submitted copies of some of the receipts/invoices the Landlord fails to provide sufficient evidence of damage that was caused by the actions or neglect of the Tenant. The Landlord's claims are disputed by the Tenant. There is no condition inspection report for the move-in or the move-out to support the Landlord's claims. The Landlord's monetary claim is dismissed.

As for the Tenant's monetary claim, I also find that the Tenant has failed to provide sufficient evidence that there was any permission to buy a new washer or that any notification to the Landlord took place regarding the repair of the washer/dryer for a 9 year period to allow the Landlord to properly address any issues brought forward by the Tenant. The Tenant's claims are disputed by the Landlord. The Tenant has also failed to provide any invoices/receipts for any expenses incurred as a result. The Tenant's monetary claim is dismissed.

As the Tenancy is at an end, I order the return of the \$250.00 security deposit by the Landlord to the Tenant. **The Tenant having being successful in the request for the return of the security deposit is entitled to recovery of the \$50.00 filing fee. I also order the recovery of the accrued interest to date of \$8.86 for the accrual period between August 1, 2009 and May 31, 2013.** The Tenant is granted a monetary order for ~~\$250.00~~ **\$308.86**. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for ~~\$250.00~~ **\$308.86**.

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 10, 2013

Residential Tenancy Branch

