



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on May 1, 2013. The rent was \$500 at the end of the tenancy. The tenant paid a

security deposit of \$240 at the start of the tenancy. The tenancy ended on July 31, 2013.

The landlord retained the security deposit alleging the tenant had damaged her queen size mattress.

The tenant filed an Application for the return of the security deposit. That claim was heard by conference call on November 28, 2013. The arbitrator in that hearing dismissed the tenant's claim on the basis that the tenant failed to provide the landlord with her forwarding address in writing. The decision provided that the landlord must return the security deposit or make application to retain all or apportion of it, with 15 days of receipt of this decision. The landlord filed the within application with 15 days.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

The landlord testified the tenant damaged the queen size mattress in the rental unit by leaving a large blood stain on the mattress. The landlord further testified that she purchased the mattress from IKEA a couple of years ago for a cost of \$499. However, the landlord failed to produce any evidence as to the cost of the mattress and failed to

produce photographs as to the stain. The landlord has not yet bought a replacement mattress. The rental unit has been rented to a new tenant.

The tenant disputed the amount the landlord was claiming. She submitted the landlord has not presented proof of the damage. Further, the landlord has not presented proof of the amount of the damage. She submitted the mattress may have been purchased many years ago and is virtually worthless. The tenant did not dispute that she damaged the mattress.

After carefully considering the disputed evidence of the parties I determined the tenant damaged the landlord's mattress. However, I determined the landlord failed to prove the quantum of her claim. The landlord failed to provide evidence as to when the mattress was purchased and how much it cost. Further, the landlord failed to provide evidence as to the cost of a comparable mattress. In the circumstances I determined the landlord has established a claim against the tenant in the sum of \$120.

Monetary Order and Cost of Filing fee

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$120 plus the \$25 for the filing fee (reduced to reflect the limited success of the landlord) for a total of \$145.

Security Deposit

I determined the security deposit plus interest totals the sum of \$240. I ordered that the landlord may retain the sum of \$145 from the security deposit. I further ordered that the landlord pay to the Tenant the balance of the security deposit in the sum of \$95.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: February 24, 2014

Residential Tenancy Branch

