



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. This matter was unable to complete on the first date scheduled and was adjourned to today's date where the matter was concluded. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Preliminary Matter: Service Of Evidence

Both parties submitted their evidence past the legislated deadline and not in accordance with the Act.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*”

Given the above, I declined to accept or consider any evidence that was not properly served on the other party. However, verbal testimony from both parties was considered.

Background, Evidence and Analysis

The landlord's testimony is as follows. The tenancy began on April 2, 2013 and ended on October 31, 2013. The tenants were obligated to pay \$2450.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1225.00 security deposit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, **the landlord 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. The landlord is the sole applicant in this matter and I address the landlord's claims and my findings around each as follows

First Claim – The landlord seeks \$2150.00 for the loss or revenue for the month of November 2013. The landlord stated that she was unable to rent the unit due to the tenant giving very strict guidelines on access to show the unit, the tenant changed the lock without the landlords' permission and that the garage was extremely dirty.

The tenant disputed this portion of the landlords' application. The tenant stated that the garage was very much in the same condition that he had received it. The tenant stated that access was not restricted and that the reason the locks were changed was that the previous tenant still had keys to the unit and was accessing it to pick up his belongings. The tenant stated that he was concerned for the safety of his family and not attempting to stop the landlord from coming into the unit.

The landlord acknowledged that she had not conducted a condition inspection report at the start of the tenancy. It was explained to the landlord the very useful and important nature to conduct the report at move in and move out. This was explained on three separate occasions to the landlord yet she did not seem to grasp its importance. In

addition the landlord stated that she had wanted the tenant to conduct the showings and that she had not actually shown the unit until the third week of October. I find that the landlord was not restricted from accessing the unit. The landlord was not aware the locks were changed until after the tenant moved out. I note the monthly rent was \$2450.00 yet the landlord sought \$2150.00 for loss of revenue. The landlord did not explain this discrepancy. Based on the testimony, lack of condition inspection report and on the balance of probabilities I dismiss this portion of the landlords application.

Second Claim – The landlord is seeking 116.90 for utilities that she states the tenant is responsible for. The landlord stated that she could provide documentation if necessary to support this claim. The tenant disputed this claim. The tenant stated that he had paid up until the end of tenancy and that the landlord was seeking costs post tenancy. The landlord was unable to provide sufficient evidence to support this claim and I therefore dismiss this portion of the landlords' application.

Third Claim – The landlord is seeking \$1004.25 for cleaning and some minor damages. The landlord stated that the garage was "absolutely filthy with toxic sawdust". The landlord stated that she asked the tenant to clean the garage and suite but he refused. The tenant disputed this claim. The tenant stated that the house and garage was left in much the same condition that he received it and that the damage claims the landlord is seeking could be defined by normal wear and tear.

As I have stated in a previous claim, without the condition inspection report or other supporting documentation to provide a snapshot of the condition of the unit at move in versus move out I am unable to ascertain the changes to the unit, if any. Based on the above and on the balance of probabilities I dismiss this portion of the landlords' application.

It is important to note, that even if I have erred in excluding the documentary evidence of this hearing, the landlord had not provided sufficient evidence to support her claim i.e. a condition inspection report, utility bills, cleaning and repair bills equating to the amount as claimed, and that the outcome would have been the same if I had included it.

The landlord has not been successful in her application.

The landlord must return the security deposit within fifteen days of receiving this decision.

Conclusion

The landlords' application is dismissed in its entirety.

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: April 08, 2014

Residential Tenancy Branch

