



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 tenant is seeking the return of double the security and pet deposit. 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 October 1, 2012 and ended on January 31, 2014. The tenants were obligated to pay \$1600.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$775.00 security deposit and a \$775.00 pet deposit. Condition inspection reports were conducted at move in and move out.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, each party 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 address that landlord's claim and my findings as follows.

Landlords First Claim – The landlord is seeking \$600.00 in liquidated damages. The landlord stated the parties initially signed a one year fixed term agreement. At the conclusion of the one year the parties renewed the agreement for another year. The

landlord stated that due to her being out of the country there were some errors made in regards to the agreement. The landlord stated the tenants were fully aware of the liquidated damages clause. The tenant disputes this claim. The tenant stated that the tenancy agreement submitted by the landlord herself does not reflect any liquidated damages clause and should not be awarded. After reviewing the documentation, I agree with the tenant. The subsequent tenancy agreement and amendment do not reflect a liquidated damages clause. Based on the ambiguity in the documentation I dismiss this portion of the landlords' application.

Landlords Second Claim – The landlord is seeking \$1078.82 for the replacement and labour costs to replace door stoppers, the cost of having the lawn mowed and repaired, and the costs of having the carpets cleaned, the suite cleaned and the window coverings cleaned. The landlord provided receipts, photos and the signed condition inspection report of both parties to support their claim. The tenant disputes this claim. The tenant stated that “I agree the place needed sprucing up but shouldn’t cost that much”. The tenant stated that he signed the report before being shown how much it would cost to clean and repair the unit. The tenant stated that he didn’t see anything wrong with the window coverings and “didn’t think it was that bad”. The tenant stated that when he moved out the lawn was in better condition than when he took the suite. The Residential Tenancy Policy Guidelines’ clearly state that the tenant is responsible for the cleaning of carpets, window coverings and lawn care. Based on the above I find that the landlord is entitled to \$1078.82.

Landlords Third Claim – The landlord is seeking \$559.99 for the replacement of a dishwasher. The landlord stated that the dishwasher was functioning when given to the tenant. The landlord stated that shortly after the new tenants moved in the dishwasher was not functioning properly. The landlord stated the dishwasher was full of mold and needed to be flushed out with bleach. The landlord stated that the subject tenant did not inform her of any issues with the dishwasher. The tenant disputes this claim. The landlord submitted a condition inspection report as part of this hearing and relied on it to prove her claim on other items. This report does not reflect any issue with the dishwasher. Based on the insufficient evidence before me I dismiss this portion of the landlords' application.

I address the tenants claim and my findings as follows.

Tenants Claim - The tenant is seeking the return of double the security and pet deposits = \$3100.00 - \$575.00 that the landlord has already returned for a total claim of \$2525.00. The tenant advised that the landlord still has \$975.00 in deposits in trust. The tenant stated that he did not receive the \$575.00 until after February 14, 2014. The

landlord disputes this claim. The landlord stated that she received the tenants forwarding address on January 31, 2014 and filed for dispute resolution on February 14, 2014. The landlord stated that she has filed within the timelines and provided documentation to support her position. I agree with the landlord. The landlord applied within the legislated timelines and was not required to return any of the deposits as she was seeking an amount beyond the total, pending this hearing. The doubling provision does not apply. I dismiss the tenants' application.

The tenant has not been successful in his application.

The landlord has established a claim for \$1078.82. The landlord is also entitled to the recovery of the \$50.00 filing fee. I order that the landlord retain the \$975.00 in deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$153.82. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$153.82.

The tenants' 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: June 09, 2014

Residential Tenancy Branch

