



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and the respondent. 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 respondent by mailing, by registered mail to where the respondent resides on June 18, 2014. 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 tenancy began on December 1, 2012 when the parties entered into a fixed term tenancy agreement. It was subsequently renewed on December 1, 2013 and provided for an end on tenancy dated on May 31, 2014. The tenant paid a security deposit of \$815 and a pet damage deposit of \$815 at the start of the original tenancy.

The tenancy ended on May 31, 2014. The parties conducted a Move-Out Inspection on June 2, 2014. The landlord claims the sum of \$139.90 for the cost of repairing a handle to a freezer. The landlord has withheld this sum and returned the balance of the security deposit and pet damage deposit to the tenant on June 11, 2014.

The landlord claims for the cost to repair a broken freezer handle based on the following:

- The freezer was purchased new in September 2012 approximately 3 months before the tenant moved in.
- The freezer had a one year warranty
- The tenant admitted breaking the handle many months ago but failed to report the damage to the landlord and therefore the landlord was not able to get it repaired under the warranty.

The tenant testified as follows:

- She admitted breaking the handle although she denied that she was negligent in how she used it.
- The tenant could not remember exactly when the handle was broken.
- The tenant testified the handle was not a major thing as there were many other deficiencies with the rental unit.
- The tenant objected to the landlord proceeding with the repair without first giving her an opportunity to complete the repair herself or advise her of the cost so that she could find someone else to complete the repair.

The landlord responded testifying that the broken handle was identified in the Move-Out Inspection report that was completed on June 2, 2014.

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.

Monetary Order and Cost of Filing fee

After carefully considering the disputed evidence presented by the parties I determined the landlord has established a claim for the cost of the repair of the broken handle. The tenant does not dispute that she broke the handle. The freezer was recently purchased by the landlord. I determined the tenant was negligent in failing to report the damage in a timely manner so that the landlord could attempt to have the repair covered by the warranty. I do not accept the submission of the tenant that she is not responsible because the landlord failed to give her an opportunity to make the repair herself. The tenant was aware of the damage prior to the end of the tenancy and it is her responsibility to make the repairs before the tenancy comes to an end.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$139.90 plus the \$50 filing fee for a total of \$189.90.

Security Deposit

I determined the landlord holds a security deposit in the sum \$139.90. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent 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: August 11, 2014

Residential Tenancy Branch

