



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The tenant submitted, in oral and written evidence that he viewed the rental unit on *November* 30, 2013, after answering an advertisement on Craigslist. I note that the month in question in this case is October 2013.

When viewing the rental unit, he met with AM, who, although not the owner, represented the owner, according to the tenant.

The tenant submitted that he noticed at the viewing, the rental unit was a “disaster” and needed a great deal of work. The tenant submitted that he was informed by AM that the work would be finished by move-in day. Despite the condition, on October 5, 2013, the tenant stated that he moved into the rental unit, discovering that there was old food, garbage, dead crickets, a broken bathroom drain, and no heat, hot water or stove.

When asking AM about these concerns, she assured him the next day the issues would be addressed. On October 6, 2013, the tenant noticed electrical problems and notified the landlord’s agent. The next day, the driveway was blocked and he was late to work.

On October 7, 2013, according to the tenant, he informed AM that the rental unit was not fit to be rented and that he would be moving out, requesting a return of the \$800 he paid for the monthly rent. Despite assurances from AM that she would try to return a portion of the \$800, the landlord never returned this amount.

AM informed the tenant on October 7, that an electrician was coming to the rental unit to make repairs.

The tenant submitted that he moved out, but due to financial difficulties, he was not able to move all his personal property from the rental unit; on October 20, 2013, he returned to the rental unit to check on his belongings and notice new tenants using his property.

The tenant’s monetary claim is \$1050, comprised of \$800, for a return of the rent payment for October 2013, \$50 for a bunk bed, \$150 for time missed from work, and the filing fee of \$50.

The tenant’s relevant documentary evidence included a written statement and a receipt showing a payment of \$800 to the landlord, on October 5, 2013.

Landlord’s response-

AM acknowledged she acted as agent for the owner, HC, and in that capacity, she showed the tenant the rental unit on September 30. The landlord’s agent submitted that there was some work to be done to the rental unit, but that the tenant agreed to perform some electrical work in lieu of a reduction in the amount of the security deposit to be paid later.

The landlord's agent submitted that she received a call from the tenant on October 6, regarding an electrical issue, and an electrician was called.

The landlord's agent denied that new tenants were using the tenant's personal property, and that they were in storage; however, she submitted that the tenant has never called or made contact to collect the remainder of his belongings.

Owner/landlord's response-

HC submitted that he informed AM the rental unit was not ready, but that the tenant insisted on moving into the rental unit, despite its' condition. The landlord suggested that the tenant was desperate to move in, due to the recent break-up with his wife.

The landlord submitted that the electrical issue was dealt with by an electrician, which turned out to be a deficient repair.

The landlord's relevant documentary evidence included a written submission, an invoice for plumbing work, and an invoice from an electrician, showing a service call to the rental unit on October 6, and October 8, 2013, to correct the repair deficiency.

In response to the landlord's submissions, the tenant confirmed that he agreed to perform minor repairs, but not the amount required in the rental unit.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Return of monthly rent-

I find the tenant has failed to submit sufficient proof to support this claim. Where a tenant requests repairs, the landlord must be afforded a reasonable amount of time to take sufficient action, and as the tenant moved out within 2 days of moving in, I cannot conclude that the landlord's actions or response were insufficient. Conversely, the landlord's evidence shows that when the tenant made a complaint about the electrical issue, on October 6, the landlord called an electrician, who attended the rental unit that day at an extra cost, due to being on a Sunday.

I additionally find the evidence also shows that the tenant paid rent and chose to move into the rental unit despite its state he deemed unacceptable. As such, I do not find the tenant mitigated his loss as required under section 7 of the Act as he could have chosen to advise the landlord that the rental unit was not ready.

Due to the above, I find that the tenant submitted insufficient evidence to support that the landlord was negligent or caused a loss to the tenant or that he took reasonable steps to minimize his loss as noted above.

I therefore dismiss the tenant's claim for \$800.

Bunk bed-

I find the tenant submitted insufficient evidence that the landlord unlawfully withheld a bunk bed or that he has suffered a loss in this regard. The evidence supports that the tenant failed to remove all personal property and I never heard any evidence from the tenant that, if in fact the landlord has the bunk bed, he requested its return and the landlord refused.

Due to the tenant's insufficient evidence of a loss or breach of the Act by the landlord, I dismiss tenant's claim for \$50.

Loss of income-

I do not find the tenant submitted any evidence to support this claim, or proof that he suffered a loss in this amount.

I therefore dismiss his claim for \$150.

Due to the above, I dismiss the tenant's application requesting monetary compensation.

As I have dismissed the tenant's application, I decline to award him recovery of the filing fee.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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 20, 2014

Residential Tenancy Branch

