



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR MNR MNDC OLC FF

Introduction

This hearing was convened pursuant to applications by the landlord and the tenant. The landlord applied for an order of possession pursuant to a notice to end tenancy for unpaid rent as well as for monetary compensation. The tenant applied to cancel the notice to end tenancy as well as for monetary compensation and an order that the landlord comply with the Act.

At the outset of the hearing the parties confirmed that the tenancy had ended. I therefore dismissed the portions of the applications regarding the notice to end tenancy and an order that the landlord comply with the Act.

Preliminary Issue – Landlord’s Monetary Claim

In his application the landlord claimed compensation for unpaid rent and utilities only. The landlord’s evidence included a page entitled “Claim for Losses,” which listed several charges for cleaning, expenses and repairs. The landlord did not amend his application to include these additional amounts.

Under the Residential Tenancy Branch Rules of Procedure, when an applicant seeks to increase their monetary claim they must amend their application. The amended application must be served on each respondent and the Branch. It must also be clearly identified, and be provided separately from all other documents.

The landlord did not take these steps to properly amend his application. In regard to the landlord’s application I therefore only considered his monetary claim for unpaid rent and utilities, as set out in his original application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

Tenant's Claim

The tenant has claimed compensation of \$425 for her orthopedics.

On June 20, 2014 there was a flood in the rental unit because the water tank “blew.” The tenant claimed that her orthopedics were damaged and the landlord gave the tenant authorization to deduct \$425 from her rent to compensate for this damage. The tenant withheld \$425 from her July 2014 rent.

The landlord stated that they contacted the doctor who made the tenant’s orthopedics, and the doctor expressed surprise that they lasted as long as they did.

Landlord's Claim

The landlord has claimed \$425 in unpaid rent and \$328.79 for an unpaid water bill. The landlord stated that at no time did they tell the tenant it was okay to deduct \$425 from her rent. The landlord also stated that the tenant was behind in her water bill.

The tenant stated that her toilet had been broken and constantly running since April 25, 2014, and when the tenant told the landlord about it on May 1, 2014, the landlord responded “I’m not a plumber,” and he instructed the tenant on how to deal with the toilet. The tenant submitted that she was probably responsible for \$100 to \$150 for the water bill.

The landlord stated that he looked at the toilet and “the floater was sticky,” so he called a plumber. The plumber came over and fixed the toilet after May 1, 2014.

Analysis

I find that the tenant is not entitled to her claim, as she failed to establish the current, depreciated value of her damaged orthopedics. The landlord’s evidence suggested that the orthopedics may have outlived their useful life.

I accept the evidence that the tenant withheld \$425 of her rent and the landlord is entitled to that amount. In regard to the water bill, I accept the evidence of the tenant that the water bill was likely unusually high because of the problems with the running toilet and faulty hot water tank. I therefore find that the landlord is not entitled to the full amount of the water bill. I grant the landlord \$150 for the water bill, based on the tenant's acknowledgement of responsibility for this amount.

As the tenant's application was not successful, she is not entitled to recovery of the filing fee for the cost of her application.

As the landlord's application was mostly successful, they are entitled to recovery of their filing fee of \$50.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order under section 67 for the balance due of \$625. This order may be filed in the Small Claims 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: September 22, 2014

Residential Tenancy Branch

