



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD, FF

Introduction

This hearing dealt with cross applications. Both parties have filed an application seeking a monetary order and an order for the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on or about May 1, 2011 and ended on May 31, 2014. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$475.00.

The landlord gave the following testimony:

The landlord stated that the tenant left the unit dirty and with some minor damage. The landlord is seeking \$435.65 for the replacement of a stove and \$1753.95 for painting, repairs and cleaning. The landlord stated that the tenant moved out before she was able to arrange a move out condition inspection with him. The landlord disputes the loss of quiet enjoyment, harassment, neglect, pain and suffering and loss of quality of life for 2 years as claimed by the tenant. The landlord stated that the tenant did make some

complaints about the upstairs tenant but much of those complaints had to do with who was responsible for cleaning the yard and cleaning up after the dog.

The landlord stated that whenever the subject tenant had an issue or complaint she would respond quickly. The landlord disputes the tenants claim that the upstairs tenants were having parties and making noise on a regular basis. The landlord stated that there was an incident when the upstairs tenants moved in and that matter was resolved. The landlord stated that if the upstairs tenants were so bad why did the tenants stay on for two additional years since they moved in?

The tenant gave the following testimony:

The tenant stated that the upstairs tenants were a problem almost immediately after they moved in. The subject tenant stated that the upstairs tenants would have parties on a regular basis that went into the early morning hours. The tenant stated that there was a constant flow of people coming and going in the upstairs unit. The tenant stated they would set off fireworks in the direction of the home. The tenant stated that he was threatened by the people upstairs on more than one occasion. The tenant stated that he would phone, text and e-mail the landlord of his complaints. The tenant stated that if the landlord did decide to speak to the upstairs tenants, the results were short lived and the upstairs tenants reverted back to their previous behaviour.

The tenant stated the landlord did not show up for a condition inspection report at move out. The tenant stated that the landlord asked that he act as agent for her when the new incoming tenants arrived and to provide them the keys to the unit. The tenant stated the landlord had not provided the two opportunities to conduct an inspection as is required by the Act. The tenant stated that the unit was in good condition and that the new incoming tenants did not have an issue with the condition of it. The tenant stated that he is seeking the return of his security deposit and $\$500.00 \times 24 \text{ months} = \12000.00 for having to deal with the upstairs tenants.

Analysis

I will first deal with the landlords' application and my findings as follows:

The landlord is seeking \$2250.95 for the replacement of a stove, painting the suite, cleaning the suite and minor repairs. The landlord stated that she had all the receipts, documentation, photos and condition inspection reports to support her claim; however none of those items were submitted for consideration. The landlord stated that due to some health and personal issues she has been unable to submit those for this hearing. Based on the insufficient evidence before me I must dismiss the landlords' application in its entirety.

The tenant is entitled to the return of his \$475.00 security deposit.

I will deal with the tenants' application and my findings as follows:

The tenant is seeking \$12000.00 as compensation for having to put up with the upstairs tenants.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has failed to satisfy me of all four of the above grounds as required, specifically #1, #2 and #3. I accept that they were some minor nuisances during this

tenancy but not enough to warrant compensation. Based on the insufficient evidence before me I dismiss this portion of the tenants' application.

As for the monetary order, I find that the tenant has established a claim for \$475.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$525.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$525.00.

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: October 28, 2014

Residential Tenancy Branch

