



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and the tenant participated in the teleconference hearing.

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. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Jurisdiction

Although this hearing convened pursuant to the landlord's application, at the outset of the hearing the landlord raised the question of whether I had jurisdiction to hear this matter. The landlord stated that her agreement with the tenant was that there would be times during the tenancy when the tenant would leave the rental unit and the landlord would occupy it. The landlord confirmed that this did not in fact happen during the tenancy; the tenant vacated the unit on June 25, 2014 and the landlord began occupying it on June 26, 2014. I therefore found that I had jurisdiction to consider this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 15, 2014 as a fixed-term tenancy to end on June 30, 2014. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$800. The landlord and the tenant did not complete a move-in condition inspection report.

The tenancy ended on June 25, 2014, when the tenant vacated the unit. The landlord began occupying the unit on June 26, 2014. The tenant and the landlord carried out a move-out inspection on July 17, 2014. The tenant signed the condition inspection documents but indicated that she disagreed with the landlord's assessment of the condition of the unit. The landlord returned \$32.94 of the tenant's security deposit. The tenant acknowledged in the hearing that she agreed to allow the landlord to keep \$157.50 from the deposit for repair to an oak table top.

Landlord's Claim

The landlord claimed monetary compensation of \$609.56, comprised of \$382.06 for spoiled food and \$227.50 for 6.5 hours of cleaning at \$35 per hour.

The landlord stated that when they returned to the house on June 26, 2014 they immediately noticed a horrible smell coming from the deep freezer. They found that all of the food in the freezer was completely thawed and had spoiled. The landlord examined the breaker panel and found that two circuits were turned to the "off" position. The landlord stated that the tenant must have turned the circuits off, because if there is a power surge the circuits switched to "tripped," and they have to be manually turned off.

The landlord stated that the tenant only did surface cleaning, and they had to clean out the freezer; dispose of the food; clean the floor under the freezer, washer and sink; and repair the freezer seal.

Tenant's Response

The tenant denied turning off the circuits. The tenant stated that she called BC Hydro and they told her it was totally possible for the circuits to switch all the way to off if there is a power surge. The tenant said that she never smelled anything coming from the freezer, and she never opened or touched the freezer.

Analysis

I find that the landlord has failed to provide sufficient evidence to support their claim. The landlord has no evidence to establish that the tenant turned off the circuit for the freezer. The move-out condition inspection documents are of no evidentiary value, as the inspection was done three weeks after the tenant had vacated and the landlord had moved back into the unit.

The only further portion of the security deposit that the landlord is entitled to retain is \$157.50 for repairs to the oak table top.

As the landlord's application was unsuccessful, they are not entitled to recovery of the \$50 filing fee for the cost of this application.

Conclusion

The landlord's application is dismissed.

I order that the landlord retain \$157.50 from the balance of the security deposit of \$767.06 and I grant the tenant an order for the balance due of \$609.56. 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: January 22, 2015

Residential Tenancy Branch

