



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to recover the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the hearing the Landlord corrected the order of his first and last name. Given this correction I amend the application to set out the correct order of the Landlord's name.

The Landlord states that he is not the landlord for the unit. The Landlord states that he has just showed the Tenant the suite and collected rent from the Tenant as a favor to the landlord who is a friend. The Tenant states that the Landlord entered into a verbal agreement with the Tenant to rent the suite, that the Landlord or his wife always collected the rent and that this is who the Tenant dealt with during the tenancy.

Section 1 of the Act defines a landlord to include the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. Based on the undisputed evidence that the Landlord showed the Tenant the unit and collected rent from the Tenant I accept the Tenant's evidence that a tenancy agreement

was entered into between the Tenant and the named Landlord and that the Landlord named in this application is properly named as a landlord.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The following are undisputed facts: The tenancy of a basement suite in a house with the Landlord and wife living in the upper unit started on April 1, 2014. Rent of \$950.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. No move-in inspection or report was completed. On July 15, 2015 a flood occurred in the upper unit and flowed into the basement suite causing damage to the suite and the Tenant's belongings. On July 17, 2014 the Parties entered into an agreement to end the tenancy, to return rent paid for July 2014, to compensate the Tenant for damages caused by the flood which included the return of the security deposit to the Tenant.

The Landlord states that he did not mean for the flood to occur and that he asked the Tenant to move out of the unit. The Landlord states that the Tenant moved out of the unit on September 4, 2014. The Tenant states that she did not live in the unit after the flood and that she obtained a new tenancy and moved into the new unit on September 1, 2014. The Tenant states that her belongings were removed from the unit in August 2014.

The Tenant provided a copy of the agreement on compensation and states that the only compensation received pursuant to that agreement was return of the July 2014 rent of \$950.00. It is noted that the total monetary amount agreed to be paid to the Tenant as per the agreement was \$5,135.00. Tenant claims \$3,785.00 in the application and indicates that she also wishes to claim the security deposit amount.

The Landlord states that although he signed the agreement he did not pay the security deposit amount as the Tenant left the unit unclean and with damages. The Landlord states that he did not pay the Tenant for the damages amount on furnishings as he only agreed to the estimated costs and the Tenant did not provide any receipts for the actual costs.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the undisputed facts that the Landlord signed the agreement setting out the compensation for damages to the Tenant's belongings, I find that the Tenant has substantiated that the Landlord caused damage to the Tenant's belongings and that the Landlord agreed to the costs set out in the agreement as compensation for these damages. Although the Landlord argues that he did not receive any receipts for the costs agreed to, I find this to be irrelevant as the agreement does not mention the requirement for any receipts. I find therefore that the Tenant has substantiated an entitlement and as the Tenant did not amend the application to increase the amount being claimed, I restrict this entitlement to the amount claimed in the application for **\$3,785.00**. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,835.00**

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,835.00**. If necessary, 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: February 26, 2015

Residential Tenancy Branch

