



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNR, MNDC, MNDS, FF

Introduction

There are applications filed by both parties. The landlord has made an application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee. The tenant has also made an application for a monetary order for money owed or compensation for damage or loss and the return of the security and/or pet damage deposits.

Both parties attended the hearing by conference call and gave testimony. Both parties confirmed receipt of the notice of hearing letter of the other parties application for dispute. The tenants did not submit any documentary evidence. The landlord states that an evidence package consisting of 12 pages and 15 photographs were served on the Residential Tenancy Branch and the tenant. The RTB has confirmed receipt of the documentary evidence package on January 12, 2015. The tenant disputes that they have no received any documentary evidence. The landlord's agent states that she cannot provide any details of how, when or what was served to the tenants. The landlord later provided contradictory direct testimony that she has a signed receipt by the tenant, B.H. that the documentary evidence was received. The tenants again disputed that no documentary evidence was received.

I find that as both parties have attended and have confirmed receipt of the notice of hearing package submitted by the other party, I am satisfied that each party has properly served the other regarding their application for dispute.

The landlord was contradictory in her direct testimony and was unable to provide sufficient evidence to satisfy me that the tenant was served with their documentary evidence. The tenant has disputed receiving the landlord's documentary evidence. The onus or burden lies with the landlord in proving their claim of service. I find that the landlord has failed to provide sufficient evidence to satisfy me that the tenant was properly served with the landlord's documentary evidence package. The landlord's documentary evidence is excluded and shall not be relied upon for the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

Both parties confirmed that there is no signed tenancy agreement. Neither party can provide the date of when the tenancy ended. Neither party can provide any details of when or if the tenant provided their forwarding address in writing to the landlord.

Both parties agreed that the tenant paid a \$650.00 security deposit to the landlord at the beginning of the tenancy. Both parties also agreed that no condition inspection report for the move-in or the move-out was completed.

The landlord seeks a monetary claim of \$1,600.00 for damage to the unit, site or property, for unpaid rent or utilities and for money owed or compensation for damage or loss. During the hearing the landlord stated that the monetary claim was for over \$5,000.00, but that an amended application was not filed. The landlord also confirmed that no details of any damages being claimed were made in the body of their application, nor was there a monetary worksheet completed. The landlord stated that she understood that her claim would be limited to the original amount filed for \$1,600.00.

The landlord clarified this claim to consist of \$78.34 for the repair of a broken oven door, \$1,050.00 for the cost of drywall repairs, \$1,150.00 for the cost of painting and patching the walls and an unknown amount for repair/replacement of a bathroom door. The landlord's agent could not provide any further details of the items claimed.

The tenant disputes the claim of the landlord stating that some of the items claimed by the landlord were already damaged when they moved into the rental unit and that the landlord caused the holes in the wall due to a burst water pipe. The tenant states that the landlord cut open the wall at various locations to locate the water pipes to effect repairs. The tenant states that the landlord left the holes open for many months during the tenancy.

The landlord states that it is obvious the tenants caused the damage as they were occupying the rental unit during the tenancy.

The tenants seeks a monetary order for \$950.00 which consists of \$650.00 for the return of the security deposit. The tenant stated that the second portion of the claim is for \$275.00 for the return cashed funds from a government cheque to the tenant's son which the tenant claims the landlord fraudulently cashed. The tenant could not clarify why this claim differs from the written claim in the tenant's application for \$256.00 for "owed rent".

Analysis

I accept the disputed direct testimony of both parties.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In the landlord's claim for damages totaling, \$1,600.00, I find that the landlord has failed to provide sufficient evidence to satisfy me that the damage was caused by the actions or neglect of the tenant as this is being disputed by the tenant. The landlord has not provided sufficient evidence to justify this claim which is disputed by the tenants. The landlord's application for a monetary order is dismissed.

On the tenant's claim for \$275.00 for a cheque which is claimed to have been cashed by the landlord, I find that the tenant has failed to establish. The tenants have not provided any details or evidence to support this claim. For the written portion of the claim, the tenant is also unable to clarify the claim of \$256.00 for owed rent. The tenant stated that he and his mother do not have any details of this claim. This portion of the landlord's claim is dismissed.

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under

section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

For the remaining portion of the tenant's claim for the return of the security deposit of \$650.00, it is clear based upon the direct testimony of both parties that it is unknown by either when the tenancy ended. It is also clear that neither party can provide any details of when or if the tenant's forwarding address in writing was received by the landlord. The landlord's claim against the security deposit under section 38 (1)(d) has failed.

I also find that as of the date of this hearing, February 26, 2015 the landlord is deemed to have received notification of the tenant's forwarding address in writing based upon the filed address in the tenant's application for dispute. The landlord has 15 days from this date to repay the \$650.00 security deposit. The tenant is granted a monetary order for \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

If the landlord fails to repay the \$650.00 security deposit within the allowed time frame the landlord is subject to Section 38 (6) of the Residential Tenancy Act. The tenant has leave to apply for compensation under section 38(6) if the landlord fails to comply with the Act.

Conclusion

The landlord's application is dismissed.
The tenant is granted a monetary order for \$650.00.

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: February 26, 2015

Residential Tenancy Branch

