



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repairs to the rental unit and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Both parties filed evidence. The landlord filed photographs into evidence. However the landlord did not provide the tenant with a copy of her photographs. Accordingly the landlord's evidence was not used in the making of this decision. Other than photographs the landlord did not file any other documents to support her monetary claim.

The tenant filed evidence that consisted of a video recording and some documentary evidence. The landlord acknowledged having received a copy of this evidence.

Issues to be decided

Has the landlord established a claim for the cost of repairs? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on June 13, 2011 and ended on July 29, 2014. Rent was \$950.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$475.00. The rental unit consists of a basement suite. The landlord lives upstairs.

The tenant stated that on July 29, 2014, he knocked on the landlord's door to inform the landlord that he was ready to move out and wanted to return the key and conduct a move out inspection.

The landlord's daughter answered the door, took the key and a forwarding address from the tenant and told the tenant that the landlord would contact him to conduct a move out inspection. The tenant stated that the landlord did not contact him and shortly after he received a notice of hearing to address the landlord's claim of \$4,000.00.

The landlord stated that the tenant caused a lot of water damage and it is evident in the tenant's video. The tenant replied that water leaked on to the floor through the glass shower doors. The tenant also stated that at the start of the tenancy he had informed the landlord about the problem and pointed out to him the presence of black spots on the walls. The tenant stated that the landlord asked him to air the room out.

The landlord has not provided a breakdown of her claim. She stated that the cost of repairs was in excess of \$4,000.00. The landlord stated that the flooring was removed and replaced due to water damage but did not provide any proof of the costs incurred. The tenant denied having caused damage to the rental unit and reiterated that the water damage was from the leaking shower doors.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

The claimant bears the burden of establishing the claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord did not file any documentary evidence to support her claim. She requested me to view the tenant's evidence for the water damage to the rental unit. The tenant's video was not clear and the audio portion was inaudible. However, the tenant did not deny the existence of water damage. He denied causing the damage and stated that it came from the landlord's negligence when he failed to respond to his complaints about the leaking shower doors.

Even if I accept the tenant's video evidence, it does not prove how the damage was caused. In the absence of move in and move out reports and other documentary evidence to support the landlord's claim, I am unable to determine the cause of the water damage and in addition, I am unable to make a monetary award as the landlord has not provided any invoices or receipts of the expenses she incurred.

For the above reasons I find that the landlord has not proven her case and accordingly her application is dismissed. Since the landlord has not proven her case, she must bear the cost of filing her own application.

The landlord has in her possession the security deposit in the amount of \$475.00. I order the landlord to return this amount along with applicable interest to the tenant within 15 days of receipt of this decision

Conclusion

The landlord's application is dismissed. She must return the security deposit plus accrued interest to the tenant within 15 days of receipt of this decision.

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: March 03, 2015

Residential Tenancy Branch

