



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to two Applications for Dispute Resolution.

On October 02, 2014 the Landlord filed an on-line Application for Dispute Resolution in which she applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that she did not believe this on-line Application for Dispute Resolution had been processed by the Residential Tenancy Branch, so she did not serve it to the Tenant. As this Application for Dispute Resolution was not served to the Tenant, I find that it has been abandoned and it will not, therefore, be the subject of these proceedings.

On February 12, 2015 the Landlord filed another Application for Dispute Resolution in which she applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; for "other"; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on February 13, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents.

On April 20, 2015 the Landlord submitted documents and photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that the evidence was not served to the Tenant as evidence for these proceedings. As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

On March 03, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents have been previously provided to the Landlord so they were not served to the Landlord as evidence for these proceedings. As the evidence was not served to the Landlord as evidence for these proceedings, it was not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy ended on December 15, 2013.

The Landlord is seeking compensation, in the amount of \$250.00, for cleaning the rental unit. The Landlord stated that the rental unit needed significant cleaning at the end of the tenancy and the Tenant stated that the rental unit was left in clean condition at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$400.00, for replacing the sink in the rental unit. The Landlord stated that the sink was so plugged that it could not be repaired and the Tenant stated that the sink was in very good condition at the end of the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$600.00, for painting the rental unit. The Landlord stated that the walls needed to be repainted because they were dirty and scuffed in several places. The Tenant stated that the walls were in good condition at the end of the end of the tenancy and did not require painting.

The Landlord is seeking compensation, in the amount of \$100.00, for replacing a ceiling light in the living room. The Landlord stated that the glass on the light was broken during the tenancy. The Tenant stated that the light was not damaged at the end of the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$400.00, for replacing a stove. The Landlord stated that none of the burners on the stove were working at the end of the tenancy and that the stove could not be cleaned because it was so dirty. The Tenant stated that the stove was not dirty at the end of the tenancy. He stated that all but one of the burners burned out during the tenancy; that he reported the problem to the Landlord; and that the Landlord never replaced the burners.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim includes establishing that a damage or loss occurred; that the damage

or loss was the result of a breach of the tenancy agreement or *Act*, establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. As the Landlord is alleging damages, the Landlord bears the burden of proving the rental unit was damaged by the Tenant.

Section 37(2)(a) of the *Act* requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, at the end of the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not leave the rental unit, including the stove, in clean condition and/or that the Tenant damaged the sink, walls, or a light fixture. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a condition inspection report, which corroborates the Landlord's testimony that the rental unit was damaged/unclean or that refutes the Tenant's testimony in this regard.

On the basis of the undisputed evidence, I accept that stove elements were not working at the end of the tenancy. It is commonly understood that stove elements wear out after extended use. In the absence of evidence to show that the Tenant misused or damaged the elements, I have insufficient evidence to conclude that the elements did not simply stop working as a result of normal wear and tear. As tenants are not required to repair damage arising from normal wear and tear, I am unable to conclude that the Tenant is obligated to repair the stove elements.

As the Landlord has failed to establish that the Tenant failed to comply with section 37(2)(a) of the *Act*, I find that the Landlord is not entitled to compensation. I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed in its entirety. 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: May 08, 2015

Residential Tenancy Branch