



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trans Canada Products Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlord has filed an application seeking a monetary order for damage to the unit, site or property, the recovery of the filing fee and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the recovery of their filing fee and the return of their security deposit.

Both parties participated in the teleconference. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their own 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord's testimony is as follows. The tenancy began on March 1, 2014 and was scheduled to end on August 31, 2014. The tenants were obligated to pay \$1350.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$675.00 security deposit.

I address the landlord's claims and my findings around each as follows.

Landlords First Claim – The landlord is seeking \$1350.00 for loss of revenue for the month of October 2014. The landlord stated that the tenancy was to terminate and that the tenants were to move out on August 31, 2014. The landlord stated that the tenants refused to leave and asked for another month. The landlord stated that she reluctantly agreed. The landlord stated that she began to advertise the unit from September 2, 2014. The landlord stated that the tenants unit was so cluttered and in state of disarray that potential renters were “turned off to the suite”. The landlord stated that the tenant was not cooperative in terms of access as well. The landlord stated that tenants offered a viewing time of 8pm – 9 pm only. The landlord stated that the offer was unacceptable.

The tenants dispute this claim. The tenants stated that the unit was neat and tidy and that the only items that may have made it looked cluttered was their bicycles; which had to be stored in the unit as the landlord would not allow the tenants to store them anywhere else on the property. The tenants stated that they had no issue with the landlord attempting to rent the unit but asked that she be flexible with her schedule and notify them in advance.

After reviewing the documentation submitted by both parties and hearing their testimony; the landlord has not satisfied me that the tenants restricted her ability to rent the unit out by leaving it messy and cluttered or restricting access and therefore; I must dismiss this portion of the landlords' application.

Landlords Second Claim – The landlord is seeking \$100.00 for painting the bathroom wall. The landlord stated that the tenant caused damage to the wall by burning candles in the bathroom and that the candle wax splashed on the wall requiring it to be painted.

The tenants dispute this claim. The tenants stated that the paint was old and that they had not done any damage to it with the candle or otherwise.

The landlord stated that condition inspection reports were done at move in and move out but did not submit that document for this hearing. In addition, the landlord provided photos of the unit but not the wall in question. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition

inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Landlords Third Claim - The landlord is seeking \$250.00 for cleaning the unit. The landlord stated the unit was not left in a reasonably clean state and that she hired a cleaning service. The landlord submitted a receipt.

The tenants dispute this claim. The tenants stated that they left the unit better than when they received it.

After reviewing the documentation before me, I find that the unit was left in a reasonably clean condition but the tenants. In addition, the receipt submitted by the landlord raises more questions than it answers and I therefore cannot rely on it. Based on the above and on the balance of probabilities, I dismiss this portion of the landlords' application.

Landlords Fourth Claim – The landlord is seeking \$42.00 for advertisement costs. The landlord stated that she advertised in the month of August and wasted her time and money as the tenants stayed a month longer than scheduled. The landlord is seeking the recovery of this cost. The landlord submitted a receipt.

The receipt submitted by the landlord reflected advertising costs in October 2014 and therefore isn't relevant to the claim as sought; accordingly I dismiss this portion of the landlords application.

Landlords Fifth Claim – The landlord is seeking \$50.00 for having to type letters to the tenants and to prepare for this hearing. The cost sought is a cost associated with litigating ones case for which the Act does not prescribe recovery for, accordingly; I dismiss this portion of the landlords claim.

The landlord has not been successful in her application.

I address the tenants' application and my findings as follows.

Tenants First Claim – The tenants are seeking \$159.39 for photos to prepare for this hearing. The cost sought is a cost associated with litigating ones case for which the Act does not prescribe recovery for, accordingly; I dismiss this portion of the tenants claim.

Tenants Second Claim – The tenants are seeking the return of nine days rent in the amount of \$405.00. The tenants stated that they moved out on September 21, 2014 due to the harassment and constant badgering of the landlord. The tenants stated that the

landlord went out of her way to ensure that they were unhappy and that they would move early.

The landlord disputes this claim. The landlord stated that she is a small woman aged 74 years old and in poor health. The landlord adamantly denies ever harassing them or calling them names as alleged.

The tenants have not satisfied me of this claim. I accept the relationship has become contentious due to the hearing process, but the tenants have not been able to present sufficient evidence that they were forced to move out early, accordingly; I dismiss this portion of the tenants' application.

Tenants Third Claim – The tenants are seeking \$1960.00 in lost wages that the female tenant alleges she lost due to the stressful situation she alleges the landlord created. The female tenant stated she was so upset about the landlords behaviour it forced her to miss working for eight days.

The landlord disputes this claim. The landlord stated that it was equally stressful to her to have to deal with this and that she did not harass either tenant at any time.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has failed to meet all four grounds as outlined above. In fact, the tenant has not satisfied me of any of the four grounds and I therefore dismiss this portion of the tenants' application.

Tenants Fourth Claim - The tenants are seeking \$20.00 for postage costs associated with their claim. The cost sought is a cost associated with litigating ones case for which the Act does not prescribe recovery for, accordingly; I dismiss this portion of the tenants claim.

Tenants Fifth Claim – The tenants are seeking the return of their \$675.00 security deposit. It is worth noting, based on the testimony and the documentation before me,

that I find that the landlord filed an application for dispute resolution within 15 days of receiving the tenants forwarding address in writing and that the doubling provision was not applicable. As I have dismissed the landlords claim in its entirety, the tenants are entitled to the recovery of the security deposit in the amount of \$675.00.

As neither party was completely successful in their application I decline to make a finding in regards to the recovery of the filing fee and each party must bear that cost.

Conclusion

The tenants have established a claim for \$675.00. I grant the tenants an order under section 67 for the balance due of \$675.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords application 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 26, 2015

Residential Tenancy Branch

