



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, repairs and cleaning. The tenant applied for the return of the security deposit, cost of repairs and for compensation. Both parties applied for the recovery of the filing fee.

The tenant testified that he had served the notice of hearing and evidence package on the landlord in person on May 08, 2015 in the presence of a witness. Despite having made application and having been served a notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions. Since the landlord did not attend the hearing, his application is dismissed. Accordingly this hearing only dealt with the tenant's application.

Issues to be decided

Is the tenant entitled to a monetary order for the return of the security deposit, for the cost of repairs, for compensation and for the filing fee?

Background and Evidence

The tenancy started on December 01, 2013 and ended on April 15, 2015. The monthly rent was \$2,000.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,000.00.

The tenant testified on January 15, 2015, the kitchen sink started to overflow in the late evening. The tenant immediately contacted the landlord's agent by email. The agent replied that she had informed the landlord and that the landlord would call the tenant the next morning. The tenant stated that in order to control damage that may occur during the night, he shut off the water supply and used buckets to bail out water.

The tenant stated the next morning he awoke to a flooded kitchen and living room. The landlord did not call back as promised and the tenant contacted a plumber who came by and fixed the problem. The tenant paid the plumber \$350.00 and gave the landlord a copy of the invoice with a request for reimbursement. The landlord did not cover the cost of the repair. The tenant has filed a copy of the invoice and is claiming reimbursement in the amount of \$350.00.

On February 06, 2015, the landlord served the tenant with a notice to end tenancy for landlord's use of property with an effective date of April 06, 2015. The tenant did not dispute the notice and moved out on April 15, 2015. The tenant stated that he did not receive a month's rent free stay from the landlord which is compensation that is due to the tenant pursuant to a s 49 notice to end tenancy. The tenant is claiming a month's rent in the amount of \$2,000.00.

The tenant is also claiming the return of the security deposit of \$1,000.00 and the filing fee of \$50.00.

Analysis

Section 51 of the *Residential Tenancy Act* states that a tenant who receives a notice to end a tenancy under section 49 (*landlord's use of property*) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, I find that the tenant received a notice to end tenancy under section 49 (*landlord's use of property*) of the *Residential Tenancy Act*. In the absence of contradictory evidence, I accept the tenant's testimony that he did not receive compensation pursuant to s.51 and accordingly I find that the tenant is entitled to receive compensation in the amount of one month's rent. Therefore I award the tenant \$2,000.00.

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit.

In this case, the tenant contacted the landlord's agent immediately when the kitchen sink started overflowing and took steps to mitigate the damage. The landlord did not call back the next day to arrange to have the problem fixed and to prevent further damage the tenant contacted a plumber and incurred a cost of \$350.00.

Based on the dire nature of the problem, I find that the landlord should have provided assistance as soon as he was notified of the problem. The landlord failed to get back to the tenant as promised and therefore the tenant was forced to hire a plumber to ensure the health and safety of his family and for the preservation of the residential property.

The tenant has filed an invoice into evidence in the amount of \$350.00. I find that the tenant is entitled to his claim. Since the tenant has proven his case, I award him \$50.00 for the recovery of the filing fee.

The landlord is currently holding a security deposit of \$1,000.00 which must be returned to the tenant.

Overall the tenant has established a claim of \$3,400.00 which consists of \$2,000.00 for compensation pursuant to a s.49 notice to end tenancy, \$350.00 for the cost of repair, \$1,000.00 for the return of the security deposit plus \$50.00 for the recovery of the filing fee.

I grant the tenant a monetary order in the amount of \$3,400.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$3,400.00**.

The landlord's application is dismissed without leave to reapply.

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: October 06, 2015

Residential Tenancy Branch

