



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on October 5, 2015. The Landlord filed seeking a Monetary Order for damage to the unit, site or property and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Assistant, the Tenant, and the Tenant's Advocate. The Landlord and Tenant gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

At the outset of this proceeding the Tenant testified he was not served with page 2 of the Landlord's application for Dispute Resolution, page 2 of the Monetary Order Worksheet, or with copies of the Landlord's photographs that had been served to the Residential Tenancy Branch (RTB).

The Landlord testified he served the Tenant with copies of all of the same documents and photographs he submitted to the RTB.

The Landlord stated he had a verbal tenancy agreement with this tenancy. The Landlord said he did not know when this tenancy started. He submitted rent began at \$650.00 per month and at some time during the tenancy it was increased to \$700.00 per month.

The Tenant testified his tenancy began in August 2010. He confirmed his rent was originally \$650.00 per month and was later increased to \$700.00. The Tenant submitted he had paid a security deposit of \$325.00 and was awarded return of double his deposit in a previous Dispute Resolution hearing.

The Landlord stated the Tenant vacated the rental unit as of the end of April 2015. The Landlord later changed his submission to say the Tenant vacated on April 15, 2015. The Tenant disputed the Landlord's submission and said he vacated the rental unit March 31, 2015. He asserted all of this evidence is recorded in the Decision from their previous hearing when the Tenant was awarded the return of double his deposit.

The Landlord confirmed that no written condition inspection report forms were completed at move-in or at move out.

The Landlord testified he is now seeking compensation as follows: \$840.00 for painting; \$257.25 for electrical work; \$100.00 for carpet shampooing; \$75.00 to fix cabinet doors and closet doors; and \$150.00 for drywall sanding and fixing.

The Tenant disputed all items being claimed by the Landlord. The Tenant argued the Landlord failed to properly inform the Tenant of the Landlords' claim by failing to serve the Tenant with copies of all of the Landlords' documents.

The Tenant pointed to the date of the painting receipt submitted into evidence and noted it was dated May 5, 2015, which was several months after the Tenant moved out. They then asked the Landlord when the unit was re-occupied by a new tenant.

The Landlord responded stating the rental unit remained vacant until May 8, 2015. He then changed his testimony to say the new tenant did not move in until June 2015. The Tenant disputed the Landlord's submission and said the rental unit was occupied March 31, 2015 as soon as he moved out. The Tenant asserted he knew the replacement tenant as they were from the same cultural community and the Tenant even babysat the new tenant's children so he knows firsthand the new tenant occupied the rental unit right after he moved out.

In closing, the Landlord stated the Tenant damaged his place and he should be compensated for that damage. The Tenant asserted the Landlord has submitted no grounds to get money from the Tenant for damages. There were no condition inspection report forms and the Landlord has submitted false information.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 59(2) of the Act stipulates that an application for dispute resolution must be in the applicable approved form; include full particulars of the dispute that is to be the

subject of the dispute resolution proceedings; and be accompanied by the fee prescribed in the regulations.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I favored the Tenant's submissions over the Landlord's submissions as the Tenant's submissions were forthright, consistent, and credible. The Landlord was not able to provide evidence regarding the basic information as to when this tenancy started or when it ended. In addition, the Landlord continued to contradict himself, changing his testimony as he continued. I found the Tenant's submissions to be reasonable given the circumstances presented to me during the hearing.

I accept the Tenant's testimony that he was not properly served with the full particulars or details of the Landlord's application, as required by section 59(2) of the *Act*. Furthermore, in absence of a written condition inspection report form or any other documentary evidence proving the condition of the rental unit at the start of the tenancy, I find the Landlord submitted insufficient evidence to prove damages were caused to the rental unit during this tenancy. Accordingly, I conclude there was insufficient evidence to prove the Landlord's application and the application is dismissed in its entirety, without leave to reapply.

Conclusion

The Landlord's application was dismissed, without leave to reapply.

This decision is final, legally binding, and 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: April 19, 2016

Residential Tenancy Branch