



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for their application. The tenant is seeking a monetary order, the return of her security deposit and to recover the filing fee for this application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

Landlords Claim

The landlord's testimony is as follows. The tenancy began on May 1, 2012 and ended on November 29, 2015. The tenants were obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$475.00 security deposit. The landlord stated that the tenant participated in the written move in condition inspection report but not the move out. The landlord stated that the tenant left the unit dirty and with some minor damage. The landlord stated that a family member has moved into the suite and none of the work has been done. The landlord stated that she did the cleaning herself. The landlord provided quotes and estimates for a total request of \$1352.60 plus the filing fee.

The tenant responded to the landlords claim as follows. The tenant stated that she did a walk through with the landlord on November 28, 2015 and was told the place "looked great". The tenant stated that she gave the keys to the landlord assuming the condition inspection was completed. The tenant stated that the following day the landlord made claims that the unit was dirty and damaged. The tenant stated that the landlord did not allow her to go back into the unit to view the alleged damages or lack of cleanliness. The tenant stated that she was not given a second opportunity in writing for the formal condition inspection. The tenant stated that she

does not feel that she should have to pay for items that the landlord has not proven or spent money on.

Tenants Claim

The tenant gave the following testimony. The tenant stated that the landlord insisted that she give a security deposit and the first and last months' rent at the outset of the tenancy. The tenant stated that she "didn't know better" and gave the amount requested in cash without obtaining a receipt. The tenant stated that she originally applied for a monetary order in the amount of \$2850.00 but has amended her application seeking \$1475.00. The tenant stated that she is now seeking the return of the \$475.00 security deposit and the "last months" rent of \$1000.00. The tenant stated that the landlord did not apply the last months' rent and that she paid for it separate and above the original amount obtained by the landlord. The tenant is seeking a monetary order of \$1475.00 plus her filing fee.

The landlord responded to the tenant as follows. The landlord stated that the last months' rent was applied and that she only holds the \$475.00 security deposit in trust at this time. The landlord stated that the tenant is confused about the payment and that there has not been any overpayment.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 67 of the Act states that 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.

Firstly, I address the landlords claim as follows. The landlord gave testimony that she has not undertaken any of the repairs at this time. The landlord has not incurred any out of pocket costs at this time. In addition, the landlord failed to provide sufficient evidence that the tenant was

responsible for the damages as claimed. Furthermore, the landlord did not give the tenant a second opportunity as outlined as follows in the Residential Tenancy Regulations

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

The consequences for not abiding by the above are outlined in Section 24 of the Residential Tenancy Act as follows:

Consequences for tenant and landlord if report requirements not met

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(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection].

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on all of the above, and on a balance of probabilities, I find that the landlord has not provided sufficient evidence to support their claim, failed to meet their requirements under Section 24 of the Act and failed to meet the four grounds as outlined in Section 67 of the Act, accordingly; I dismiss the landlords' application in its entirety.

I deal with the tenants' claims and my findings as follows. The tenant acknowledged in her own testimony that she had no documentary evidence to support her claim that she paid the last months' rent in advance. I find it illogical that she would knowingly pay the last months' rent if

the landlord had already received it at the outset of the tenancy; especially since she paid her monthly rent by cash. By paying cash she could have easily reminded the landlord of the pre-payment she made and not pay the rent; but she did pay. Based on the insufficient evidence before me and on a balance of probabilities I find that the tenant has not proven that she paid the last months' rent twice, accordingly; I dismiss that portion of her application.

As the landlord has not been successful in their application I do find that the tenant is entitled to the return of her security deposit of \$475.00.

As neither party was completely successful in their application, each party must bear the cost of their own filing fee.

Conclusion

The landlords' application is dismissed in its entirety.

The tenant is entitled to the return of the \$475.00 security deposit. I grant the tenant an order under section 67 for the balance due of \$475.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 29, 2016

Residential Tenancy Branch