



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$942.55 for damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on Tenants by mailing, by registered mail to where the Tenant resides on September 9, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on May 1, 2012. The rent was \$1015 payable in advance on the first day of

each month. The tenant paid a security deposit of \$507.50 at the start of the tenancy. The present rent is \$1060 per month.

The landlord reduced its claim to \$532.15 plus the cost of the filing fee. The landlord claims \$507.15 to replace a window and \$25 for the cost of cleaning the stove. The tenant acknowledged responsibility for the failure to sufficiently clean the stove.

The landlord gave the following evidence.

- The Condition Inspection Report at the start of the tenancy does not show any damage with the bedroom window.
- The parties discovered a hole in the window at the end of the tenancy.
- Initially the landlord received a quotation of over \$900. They have since replaced the window for the reduced cost of \$537.15.
- The rental property was constructed in 1960. She does not know whether or not that window was previously replaced.

The tenant testified as follows:

- He did not cause the damage to the window.
- The damage was located at a location which was not easily visible given the location of a broken blind.
- He and the landlord missed the damage at the time of the inspection.
- The rental property has a history of damage where the landlord failed to properly fix.
- There is a building nearby of a similar age where all of the windows were replaced.

Landlord's Application – Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord has established a claim in the sum of \$25 for the cost of cleaning the stove.
- b. I dismissed the landlord's claim for the cost of damage to the window for the following reasons:
 - The applicant landlord has the burden of proof to establish its claim on a balance of probabilities.
 - The landlord failed to prove the tenant or person permitted into the rental unit caused the damage claimed.
 - The landlord relies on the Condition Inspection Report. I am satisfied on the preponderance of evidence presented at the hearing that the damage was inadvertently missed at the time the incoming condition inspection report was prepared.
 - The Tenant's explanation as to the reason why it was not included in the incoming inspection report was credible. He denied causing the damage. He further testified that the damage was located at a location that was obscured by a broken blind. . .
 - The representative of the landlord who conducted the incoming and outgoing inspection did not testify or give evidence at the hearing. As a result I do not have first hand evidence from the landlord as to the condition of the rental unit at the start of the tenancy.
 - Policy guideline #40 provides the life expectancy of a window is 15 years. In the absence of evidence from the landlord that the window has been replaced previously I determined the window is original to the building. As a result I determined the window has lasted long past its expected life of 15 years. As a result I determined the landlord failed to prove the depreciated value of this claim

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$25 plus the \$100 filing fee for a total of \$125.

Security Deposit

I determined the security deposit plus interest totals the sum of \$507.50. I determined the landlord is entitled to retain the sum of \$125 from the security deposit. I further ordered the landlord pay to the Tenant the balance of the security in the sum of \$382.50.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the respondent must be serve the applicant with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 15, 2016

Residential Tenancy Branch