



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF O

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the cost of the filing fee and other unspecified relief.

The tenant, the landlord and a translator for the landlord, appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence. The tenant confirmed that she did not serve any documentary evidence in response to the landlord's Application.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on April 22, 2014 and reverted to a month to month tenancy after May 15, 2015. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. The

parties confirmed that the tenant's security deposit has already been deal with in a previous hearing.

The landlord's monetary claim for 5,595.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Garage door remote	\$45.00
2. Laundry- washer repair	\$350.00
3. Compensation for defamation of character	\$5,000.00
4. Painting and labour fees – damages	\$150.00
5. Filing fee (claimed \$50.00 although filing fee is \$100.00)	\$50.00
TOTAL	\$5,595.00

Firstly, the tenant testified that she did not agree with any portion of the landlord's monetary claim.

Regarding item #1, the landlord has claimed \$45.00 for the cost to replace a garage door remote. The landlord confirmed that she did not submit a photo of the garage door remote at the start of the tenancy. The landlord referred to one photo of the garage door remote that the tenant stated she did not damage the garage remote and that the button was like that during the tenancy and the button worked when you pressed the button. The landlord confirmed that she did not submit a receipt to support the value of this portion of her claim. The landlord also did not submit a copy of the condition inspection report to support the condition of the garage door remote at the start of the tenancy.

Regarding item #2, as the landlord failed to provide a copy of the condition inspection report to support her claim for a \$350.00 washer repair; this item was dismissed during the hearing due to insufficient evidence, without leave to reapply.

Regarding item #3, the landlord has claimed \$5,000.00 for compensation for defamation of character which was also dismissed during the hearing as there is no remedy for such costs under the *Act*.

Regarding item #4, the landlord has claimed \$150.00 for painting and labour costs for damages to the rental unit. The landlord confirmed that a receipt for the \$150.00 was not submitted in evidence. In addition, and as described above, the landlord failed to

provide a copy of the condition inspection report to support that the paint was damaged during the tenancy.

Item #5, the filing fee will be addressed later in this decision.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item #1 - The landlord has claimed \$45.00 for the cost to replace a garage door remote. As the landlord failed to provide a copy of the condition inspection report, a receipt and given that the tenant testified that the remote worked at the end of the tenancy, I find the landlord has failed to meet the burden of proof for this portion of her monetary claim. As

a result, I dismiss this portion of the landlord's monetary claim due to insufficient evidence, without leave to reapply.

Item #2 – The condition inspection report is a relevant and legal document that sets out the condition of the rental unit at the start and end of the tenancy and that landlord did not submit that document for consideration. Due to the landlord failing to provide a copy of the condition inspection report to support her claim for a \$350.00 washer repair, this item was dismissed during the hearing due to insufficient evidence, without leave to reapply which was indicated above.

Item #3 – Even though the landlord has claimed \$5,000.00 for compensation for defamation of character, this portion of the landlord's claim was dismissed without leave to reapply as there is no remedy for such a cost under the *Act*.

Item #4 - The landlord has claimed \$150.00 for painting and labour costs for damages to the rental unit. As the landlord failed to submit a receipt in support that \$150.00 was paid for these costs and without a condition inspection report to support the condition of the rental unit difference between the start of the tenancy and the end of the tenancy, I dismiss this item without leave to reapply due to insufficient evidence.

Item #5 – As the landlord's Application has no merit and is unsuccessful, I do not grant the landlord the recovery of the cost of the filing fee.

Conclusion

The landlord's Application has no merit and fails in its entirety.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: June 12, 2017

Residential Tenancy Branch