



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD, MNDC, SS

Introduction

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

- a. A monetary order in the sum of \$18,484 for damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The insurance companies of the respective parties are involved. At the hearing the landlord reduced her claim to \$1584 which are claims that were not covered by insurance.

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 filed by the landlord was sufficiently served on the tenant. 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 January 22, 2016. The rent was \$3600 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1800 on January 10, 2016.

The tenancy ended on February 28, 2017.

In a hearing held on June 14, 2017 the tenant obtained an order for double the security deposit less the \$800 that had been refunded to the tenant previously.

The dispute between the parties centers on whether the tenant was negligent in the operation of a washing machine which lead to significant water damage on the floor. The tenant testified his partner was doing laundry and noticed water on the front of the machine. She stopped the machine and mopped up the water. The tenant subsequently returned home and on investigation thought there might be a problem with the filter. In the process he accidentally broke a small part. However, he testified the breaking of this part occurred after the leak. The landlord disputes this testimony.

Witness #1 is a contractor hired by the landlord to inspect and repair the washing machine. He did the inspection some time after the end of the tenancy and determined the machine was operating properly. He formed the opinion the leak occurred as a result of the tenant breaking the part connected to the filter. The tenant testified he had a discussion with the contractor sometime later and the contractor told him that on some rare occasions a washing machine such as this would leak. The contractor testified that on rare occasions a machine can leak but not this type of machine. .

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.

Both parties presented large number of documents as evidence. The hearing was lengthy. Each party disputes the credibility of the other. The landlord alleged the tenant had doctored a transcript of a conversation the tenant had with a contractor hired by the landlord to determine whether washing machine was defective. The tenant had recorded the conversation without telling the contractor. The tenant denies he doctored the evidence but acknowledged that part of the transcript was not audible. The tenant alleged the landlord was not credible saying the landlord's oral testimony during this hearing varied from the e-mails and text messages she sent. Both sides focused much of the effort in this lengthy hearing questioning the credibility of the other. I did not find this evidence to be helpful as the proof relied on by each side was not sufficient to impugn the credibility of the other.

The tenant submitted many of the claims submitted by the landlord should be dismissed because they were not included in the outgoing Condition Inspection Report. Section 21 of the Residential Tenancy Act Regulations provides as follows:

Evidentiary weight of a condition inspection report

21 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 determined the failure of the tenant to include an item in an outgoing Condition Inspection Report does not prevent a landlord from subsequently bringing a claim although the standard of proof is higher.

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 is entitled to the sum of \$224 representing the account from the contractor to assess whether the washing machine was defective. I determined the tenant was less than candid when he explained the problems relating to the machine and the landlord only option was to hire the contractor to determine whether the machine was working properly. The tenant failed to produce sufficient evidence to prove the washing machine was defective.
- b. I determined the landlord is entitled to \$122.15 for the cost of repairing a broken filter part. The tenant acknowledged responsibility for breaking this part although he disputes the amount claimed.
- c. The landlord claimed \$929.40 for the cost of patching up holes in the drywall and painting. The work has not been completed. The tenant acknowledged responsibility for a couple of small holes in the drywall but disputes the amount claimed. I agree with the tenant. The amount claimed by the landlord is totally unreasonable given the small amount of damage that was caused. While the landlord submitted some quotations in support of this claim I determined the quotations are totally unreasonable given the amount of work that was necessary. I determined the landlord is entitled to nominal damages in the sum of \$50 for this claim.
- d. The tenant claimed \$120 for the cost of 10 Bormioli Luna Tumbler set. I determined this claim must be dismissed as the landlord failed to prove the tenant broke the tumbler set or took the set with her.
- e. I dismissed the landlord's claim for the cost of a coffee maker as the landlord failed to prove the tenant damaged the coffee maker or took it with him.

- f. I determined the landlord is entitled to \$21.96 for the cost of returning an internet modem by courier. The tenant had returned it to the landlord only to discover that it was needed. He requested the return and the claim by the landlord for the cost of returning it is supported by the evidence.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$418.11 plus the \$100 filing fee for a total of \$518.11.

I dismissed the claim to recover the security deposit as it was already dealt with in a previous hearing.

Conclusion

In summary I ordered that the Tenant pay to the Landlord the sum of \$518.11 in satisfaction of these claims.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served 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 final and binding on the parties.

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: August 21, 2017

Residential Tenancy Branch