



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITEX MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation under the Act, to retain the security deposit and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

At the conclusion of the hearing both parties requested a copy of the decision by sent to them by email. I confirmed their email address at the hearing and those emails addresses are noted on the covering page of this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for money owed or compensation under the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on July 8, 2011. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00.

The parties agreed that the tenancy ended on February 8, 2017, because of a fire within the building. The fire was not the fault of either party.

The landlord's agent testified that the tenant has a caseworker and they have dealt with their caseworker for the entire tenancy. The agent stated on February 14, 2017, the tenant was provided a letter indicating they would be returning the balance of February rent, and that they needed to contact the landlord to arrange a date and time to have their furniture removed. The agent stated there were also multiple other conversation with the tenant and their caseworker.

The landlord's agent testified that due to the damage of the building they had to hire security personal, who would allow access to the building during specified daytime hours. The agent stated that renters who were unable to access the daytime hours due to their work scheduled were allowed to make alternative arrangements for in the evening.

The landlord's agent testified that the tenant attended the building with their caseworker to pick up their belongings; however, they left shortly after. The agent stated that they phoned the tenant and the tenant said they were not coming back and to keep the security deposit.

The landlord's agent testified that they had to pay to have the tenant's smoked damaged property removed and disposed of. The agent stated that the amount of the removal was greater than the tenant's security deposit; however, they are only requesting to keep the security deposit and waive the balance due.

The tenant testified that 90% of their belongings were damaged due to smoke from the fire. The tenant stated that they took what they could and left the rest. The tenant stated that the landlord had insurance. The tenant stated that they did not know there was a specific area for leaving their furniture. The tenant stated that they saw other renters, removing their belongings and they mentioned something about their being a bin; however, they did not see any bin.

The witness for the tenant testified that they are an advocate. The witness stated that although they do not have direct evidence relating to this tenancy. That they were a meeting with the landlords and tenants and at that meeting the tenants were informed that they would be returning their prorated rent and the security deposits.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

There was a fire within the building ending the tenancy for all residents in the building. The fire was not in the tenant's rental unit. Even when a tenancy has ended through no fault of either the party, the tenant is still responsible for removing their personal property. Whether the removal is through their insurance company or if they did not have insurance the tenant would be responsible to make other arrangements.

In this case, the only request the landlord had of the tenant was to remove their smoked damage belonging to a specified area and the landlord would pay for the disposal. I find this a reasonable request.

When a tenant does not obtain fire insurance, they cannot expect the landlord to be their insurer and pay for the removal and dumping fees of their personal property.

I am satisfied that the tenant did not remove their smoke damaged property from the rental unit and this caused losses to the landlord in the amount of \$758.95.

While there was a general meeting about the fire; however, both the landlord and the tenant's witness have slightly different version of the security deposit. While it is reasonable that the landlord would not be claiming for damages to the units, it is also reasonable that this would be based on the tenants removing their personal property.

I find that the landlord has established a total monetary claim of \$758.95. I order the landlord to retain the security deposit of \$375.00, in full satisfaction of their claim.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in full satisfaction of the claim.

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: November 09, 2017

Residential Tenancy Branch