



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Preliminary matters

The Tenant's Counsel said the Tenant could not attend the hearing due to the Tenant was on an airplane traveling for medical reasons. The Tenant's Counsel requested and adjournment to allow the Tenant to attend the hearing in the future. The Arbitrator said he would consider adjourning the hearing but he wanted to discuss the situation before making a decision on the adjournment. Both parties agreed to continue the hearing.

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations and tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

At the start of the hearing it became apparent that the Landlord had not provided the evidence required to prove his claims and to continue the hearing. The Landlord's evidence package contained 37 pages of photographs but there was no tenancy agreement, no condition inspection reports, no monetary worksheet or receipts for the work done to repair the alleged damage. The Landlord said he thought he had sent it in. The Arbitrator reviewed the data bank and the electronic evidence files and did not find the Landlord's evidence package. The Landlord said he was not sure what had happened.

Without the evidence to establish a tenancy agreement and the terms of that tenancy agreement as well as the condition of the unit at the start of the tenancy through a condition inspection report it is difficult to determine any damages.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In the absence of a condition inspection report and paid receipts for any repairs it is difficult to prove a actual loss and to verify the amount of the loss.

Consequently, I find the Landlord has not provided the evidence to establish proof for the damages or losses he is claiming. I dismiss the Landlord's application without leave to reapply due to a lack of evidence.

Further as the Landlord has not been successful I order the Landlord to bear the cost of the filing fee of \$100.00 that the Landlord has paid.

Further I order the Landlord to return the Tenant's security deposit of \$900.00 forthwith as the Landlord has not established grounds to retain the deposit. The Tenant will receive a monetary order for \$900.00 in support of the return of the security deposit.

Conclusion

The Landlord's application is dismissed without leave to reapply.

A Monetary Order in the amount of \$900.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 29, 2017.

Residential Tenancy Branch