



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on October 20, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on October 26, 2017 were couriered to the Tenant. The Tenant stated that he received these documents and the evidence was, therefore, accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to collect a moving fee?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on April 01, 2016;

- the tenancy ended on July 31, 2017; and
- the Tenant agreed to pay monthly rent of \$1,800.00 by the first day of each month.

The Landlord is seeking compensation, in the amount of \$400.00, for removing a ceiling light.

The Landlord and the Tenant agree that the Tenant installed a ceiling light during the tenancy, in a space which previously had a simple light fixture. The Tenant stated that at the end of the tenancy he asked the Landlord if he should remove the light and the Landlord told him that the Landlord “did not care”. The Landlord stated that the Tenant did not offer to remove the light at the end of the tenancy.

The Landlord stated that the ceiling light was removed by the person who rented the rental unit at the end of the tenancy. She stated that she does not have her records with her but she believes she reduced the new renter’s rent by \$300.00 in exchange for removing the light, although she is not certain of that amount. She stated that she did not get a quote from an electrician to remove the light because the new renter was willing to remove the light.

The Tenant stated that it only took him ½ hour to install the light and he estimates it would have cost \$100.00 to have the light removed by an electrician.

The Landlord is seeking compensation, in the amount of \$250.00, for a move-out fee. The Landlord and the Tenant agree that the tenancy agreement required the Tenant to pay a move-out fee of \$250.00.

The Tenant stated that he paid the \$250.00 move-out fee to the Landlord, in cash, on July 03, 2017. The Landlord stated that the Tenant did not pay the move-out fee and that she has never received a cash payment from the Tenant. The Tenant stated that this is the only cash payment he ever made to the Landlord.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Residential Tenancy Act (Act)* requires tenants to leave a rental unit reasonably clean and undamaged at the end of the tenancy, with the exception of reasonable wear and tear.

Residential Tenancy Branch Policy Guideline #1 reads, in part, that:

Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to remove the ceiling light he installed during the tenancy.

In addition to establishing that the Tenant failed to comply with section 37(2)(a) of the *Act*, the Landlord must also accurately establish the cost of removing the ceiling light the Tenant installed. I find that the Landlord failed to establish the true cost of replacing the light. As the Landlord failed to establish the true cost of removing the light, I dismiss the Landlord's application for removing the light.

In concluding that the Landlord failed to establish the true cost of replacing the light, I was influenced by the Landlord's testimony that she did not have her records with her at the time of the hearing and that she is not certain how much she paid to have the light removed. I find that the Landlord's evidence regarding the cost of removing the light was inconsistent and, therefore, unreliable. At the hearing the Landlord testified that she thinks she paid her new renter \$300.00 to remove the light and in her Application for Dispute Resolution she declared that the replacement cost \$400.00.

In adjudicating this matter I was further influenced by the Tenant's undisputed testimony that it only took him ½ hour to install the light. I therefore find that the amount paid to the new renter for removing the light, regardless of whether that was \$300.00 or \$400.00, was unreasonable. Given that the light could, presumably be removed in the same amount of time, I find that the repair would likely have been cheaper if the Landlord had employed a qualified technician.

On the basis of the undisputed testimony I find that the Tenant was required to pay a move-out fee of \$250.00 at the end of the tenancy.

When one party alleges a cash payment that is denied by the intended recipient, the person alleging the payment bears the burden of providing the cash payment was made. This is because it is difficult, if not impossible, to prove a “negative”.

I find that there is insufficient evidence to establish that the Tenant paid the \$250.00 move-out fee, in cash. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s testimony that the amount was paid or that refutes the Landlord’s testimony that it was not paid.

As there is insufficient evidence to establish that the Tenant paid the \$250.00 move-out fee, I grant the Landlord’s application to collect this fee.

I find that the Landlord’s Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$350.00, which includes a \$250.00 move out fee and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 03, 2018

Residential Tenancy Branch