



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost to replace missing and damaged items, for the cost of repairs, cleaning, photographs, postage and for the filing fee. The landlord also applied to retain the security in partial satisfaction of his monetary claim.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony and to make submissions. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's application for dispute resolution and evidence.

The landlord's application for dispute resolution was originally heard on March 13, 2018 and adjourned to be heard on this date – June 01, 2018. The reason for the adjournment was that the landlord's evidence package was not before me.

During the hearing, it was determined that the two tenants named in the landlord's application for dispute resolution were in two separate tenancy agreements. The first tenant MP occupied the unit from September 01, 2014 to January 31, 2016. The second tenant NB took over the tenancy from January 31, 2016 until July 03, 2016. The landlord made this application on August 25, 2017.

Since NB attended the hearing, I dealt with the landlord's claims against NB and have dismissed the landlord's claims against MP with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

Issues to be decided

Is the landlord entitled to a monetary order?

Background and Evidence

NB rented the unit starting January 31, 2016 for a monthly rent of \$1,000.00 due on the first of each month. NB did not pay a security deposit. Prior to January 31, 2016, tenant MP rented the unit.

NB testified that a move in inspection was not conducted by the landlord at the start of his tenancy. The landlord was residing out of Canada at that time. The tenant further testified that he kept in touch with the landlord by email and informed him about his plans to move out of the unit in July 2016.

The tenant moved out on July 03, 2016 and testified that he locked the door and threw the keys in through a window before he closed the window. The tenant stated he sent the landlord an email on July 13, 2016 regarding these arrangements and did not hear back from the landlord.

The landlord agreed that he was out of the country during that time and returned to the property in August 2017 to find it unlocked and in a mess with several items missing or damaged. The landlord is claiming the cost of cleaning, repair and to replace the missing or damaged items.

The tenant stated that he cleaned the rental unit and left it in the same condition as of the date the tenancy started. The tenant added that the rental unit was left vacant and unsupervised for over a year and the damage could have been caused by thieves, vandals or even animals. The tenant took no responsibility for the condition of the unit in August 2017. The landlord filed into evidence, photographs taken in August 2017 along with a detailed list of expenses incurred to restore the rental unit to a habitable condition.

During the hearing, the tenant made a request for a monetary order in the amount of \$1,800.00 for his time spent to prepare for this hearing and to respond to the landlord's evidence.

Analysis

Upon review of the documents filed into evidence and based on the testimony of both parties, I find that the landlord did not conduct move in and move out condition inspections and therefore was unable to provide testimony on the condition of the rental unit at the start and at the end of tenancy.

In addition, I find that the landlord returned to the property in August 2017 which is more than one year after the tenant moved out and agreed that the rental unit was left vacant and unsupervised during this year. The landlord's documentary evidence and his testimony provide information about the condition of the rental unit as it was in August 2017 and not as it was at the end of tenancy in July 2016.

Based on the above, I find that the landlord's monetary claim is related to the condition of the property in August 2017 and not at the end of tenancy. Since the property was left vacant and unsupervised for over one year after the end of tenancy, I find that the landlord has not proven his claim for damages against tenant NB and therefore his application for a monetary order is dismissed. Since the landlord has not proven his claim, he must bear the cost of filing his own application.

In regards to the tenant's claim of \$1,800.00 for time spent preparing his defense, I informed the tenant that I am not able to hear or consider his claim during these proceedings as this hearing was convened solely to deal with the landlord's application. The tenant is at liberty to make his own application against the landlord. I have also informed the tenant that the legislation does not allow any awards for litigation related costs other than the filing fee.

Conclusion

The landlord's application against tenant NB is dismissed without leave to reapply.

The landlord's application against tenant MP is dismissed with leave to reapply.

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: June 07, 2018

Residential Tenancy Branch