



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for loss of revenue; for compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for loss of revenue and damages to the rental unit?
- May the Landlord apply the security deposit towards the monetary award?

Background and Evidence

The Landlord testified that the Tenants moved out of the rental unit on December 3, 2011, without giving due notice to end the tenancy. The Landlord seeks loss of income for the month of December in the amount of \$995.00. The Landlord testified that the rental unit has not yet been re-rented. The Landlord seeks to keep the security deposit of \$450.00 to pay for damages that the Tenants made to the rental unit.

The Landlord provided two pages of a decision dated March 27, 2012, along with an invoice in the amount of \$700.00 in evidence. The Landlord's application indicates that the Landlord is seeking a total monetary award in the amount of \$1,495.00.

The Tenants testified that they had already agreed in a previous Hearing that the Landlord could retain the security deposit in the amount of \$497.50 because they were one day late moving out of the rental unit; they did not clean the rental unit at the end of the tenancy; and they owed the Landlord money for a non-tenancy related matter.

The Tenants testified that the Landlord gave them a Notice to End the Tenancy for unpaid rent. They stated that they didn't pay an illegal rent increase and that they accepted the Notice to End tenancy and moved out on November 1, 2011. The Tenants did not provide any documentary evidence.

The Tenants testified that they had already been to a Hearing on March 27, 2012, with respect to this tenancy and that they had reached an agreement to settle all matters pertaining to the tenancy.

Analysis

This Hearing was challenging because the parties did not agree with respect to:

- The day and month that the tenancy ended.
- The amount of the security deposit paid.
- Whether or not the Landlord issued a Notice to End Tenancy for unpaid rent.

On December 8, 2012, the Tenants filed an application for return of the security deposit; an order that the Landlord return their personal property; and compensation for an illegal rent increase. The matter was heard on February 14, 2012, and the Tenant's application for return of the security deposit was dismissed with leave to reapply; the Landlord was ordered to provide access to the Tenants to retrieve their belongings; and the Tenants were provided a monetary award in the amount of \$1,000.00.

The Landlord filed an application to review the February 14, 2012, decision, which was successful. The decision and orders of February 14, 2012, were suspended pending the new Hearing. The new Hearing on the Tenants' application was conducted on March 27, 2012. The decision and orders dated February 14, 2012, were set aside, and the parties agreed that the Landlord would pay \$550.00 to the Tenants in full satisfaction **of the Tenants' claim**. The dispute resolution officer recorded the terms of settlement in the form of a decision.

I do not accept the Tenants' position that all matters surrounding the tenancy were resolved during the Hearing of March 27, 2012. I find that the settlement agreement was with respect to the Tenants' claim only.

This is the Landlord's application and therefore the **onus is on the Landlord to provide sufficient evidence to prove his claim, on the balance of probabilities**.

The Landlord has applied for compensation for loss of revenue for the month of December, 2011, and for damages to the rental unit. In order to be successful in such a claim, the Landlord must provide sufficient evidence that:

1. the damage or loss exists,
2. the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. the actual amount required to compensate for the claimed loss or to repair the damage, and

4. the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the Landlord's claim for the following reasons:

- The Landlord did not provide sufficient evidence that the Tenants damaged the rental unit, or what the damages were, or that any alleged damage resulted from the actions or negligence of the Tenants.
- The Landlord did not provide sufficient evidence of when or how the tenancy ended. The Landlord seeks loss of revenue for the month of December, 2011, but the Tenants testified that the tenancy ended on November 1, 2011 as a result of a Notice to End Tenancy for Unpaid Rent. As of May 1, 2012, the rental unit remains vacant and the Landlord provided no evidence of any attempts made to re-rent the rental unit and mitigate his loss of income.

In addition, the Landlord provided insufficient particulars on the Application for Dispute Resolution or in his documentary evidence. For example, on his Application he noted that he seeks a monetary award of \$1,495.00. In the Details of Dispute Section, he stated, "we are claiming one month rent of \$995 and we are also claiming to keep damage deposit of \$450.00 for damages" The invoice he provided in evidence is for the amount of \$700.00. The Landlord did not provide a detailed calculation of his monetary claim and the amounts claimed do not add up to a total of \$1,495.00.

The Landlord has not been successful in his application and I find that he is not entitled to recover the cost of the filing fee from the Tenants.

Conclusion

The Landlord's application is dismissed.

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: May 08, 2012.

Residential Tenancy Branch