



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has acknowledged receipt of the Landlord's notice of hearing package and the submitted documentary evidence. The Tenant did not submit any documentary evidence.

At the beginning of the hearing the Tenant made an application to adjourn the hearing. The Landlord objected. The Tenant stated that because of personal health issues that she was not prepared. The Tenant stated that she was not able to provide any written response to the Landlord's claims. The Tenant's request for an adjournment is denied. The Tenant was able to verbally articulate her response to the Landlord's claim and has not provided any details of why this had to be in writing as opposed to verbally. The Tenant did not provide any details of what if any documents would be required to dispute the Landlord's claims. The hearing shall proceed as scheduled. The Tenant was given opportunity to verbally respond to the Landlord's claims.

It was also clarified with both parties at the beginning of the hearing that the Landlord's Application would be limited to the original monetary claim of \$2,874.64. The Landlord submitted in his documentary evidence that he wished to increase the claim to include other damages. This addition was not allowed as the Landlord had not provided any proper prior notice of an amendment and did not file an amendment to the application as per the rules of procedure regarding damages to give the Tenant prior notice. The Landlord's amended portion is dismissed with leave to reapply in a separate application.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties agreed that there was a signed tenancy agreement, but that neither party submitted a copy of which. Both parties agreed that no condition inspection reports for the move-in or the move-out were completed. Both parties agreed that this tenancy ended on March 31, 2013 and that a \$250.00 security deposit was paid by the Tenant.

The Landlord seeks a monetary claim of \$2,874.64. This consists of \$450.00 for the replacement of a fireplace taken by the Tenant, \$1,453.62 for sod/yard repair, \$150.00 for removal and disposal of an unapproved structure, \$200.00 for the replacement of an exterior door and \$672.00 for the repair of deck railings. The Landlord states that none of the items in the claim have been replaced. The Landlord states that he paid \$150.00 cash for the removal of an unapproved structure (\$100.00 for labour and \$50.00 for a dump fee). The Landlord relies on photographs of the rental property and internet ads for each item. The Landlord states that the Tenant removed a fireplace from the rental unit. The Landlord also states that after removing the temporary structure that it was discovered that the sod/yard required repairs and that he obtained a quote via email. The Landlord also states that the Tenant cut out a doggy door and replaced it with an ill-fitting replacement door. The Landlord also seeks compensation for repairs for deck railings that were removed by the Landlord. The Landlord relies on photograph #5 which shows that the railings were missing at the end of the tenancy. The Landlord's witness, I.A. stated in direct testimony that he was paid \$100.00 to remove a structure from the property.

The Tenant disputes these claims made by the Landlord. The Tenant confirms that the fireplace was removed, but that this was purchased at her own cost to replace the Landlord's broken fireplace shortly after she moved in when the Landlord failed to repair or replace the fireplace. The Tenant states that the original door was replaced on the doorframe after she vacated and that she took the green door with the doggy door (which she purchased) with her. The Tenant admits that the railings were removed when she vacated the rental unit during the move and that they were not replaced. The Tenant states that all of the railings were left next to the deck as shown in the Landlord's photographic evidence.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord has failed to provide sufficient evidence to satisfy me of the condition of the rental property for the claims in losses. Both parties have confirmed that no condition inspection report for the move-in or the move-out was completed. The Landlord has failed to provide sufficient evidence that the rental unit was damaged by the Tenant. The Landlord's claims are based upon estimates from on-line ads and has confirmed that none of the monetary amounts were paid out as the result of an actual cost for repairs/replacement. The Landlord has not submitted any receipts or invoices for any amounts paid and instead relies on the witness statement of I.A. who stated that he was paid \$100.00 for removing the unapproved structure.

I find that the Landlord has failed to establish a claim for the monetary amount sought. Without any supporting evidence, I prefer the evidence of the Tenant over that of the Landlord. However, I accept based upon the witness testimony of I.A. that \$100.00 was paid to remove a structure left by the Tenant. The Landlord has established a monetary claim for \$100.00.

The Landlord is entitled to recovery of the \$50.00 filing fee. The Landlord may withhold \$150.00 from the \$250.00 security deposit in satisfaction of this claim. The Tenant is granted a monetary order for \$100.00 for the remaining portion of the security deposit. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord may retain \$150.00 from the security deposit.
The Tenant is granted a monetary order for \$100.00.

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: July 25, 2013

Residential Tenancy Branch