



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tony Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, OLC, MNSD, MND

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant also filed an application seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement and seeking an order to have the landlord comply with the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on July 1, 2011 and ended on February 26, 2015. The tenant was obligated to pay \$725.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$362.50 security deposit.

Both parties submitted an extensive amount of documentation that was considered in making a decision.

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 address the tenants' claims and my findings around each as follows.

Tenants Claim – The tenant is seeking \$725.00 as compensation for what he termed “strings of threatening and criminal messages”. The tenant stated that he had always had a good rapport with the landlord until he gave notice that he was moving out. The tenant stated that the landlord made threats on his family that required him to contact the police. The landlord disputes this claim. The landlord stated that he did not threaten the tenant at any point as the tenant is a much larger man. The landlord stated it was the tenant that was in fact aggressive in behaviour. The landlord stated that the police advised him that the tenant made a meritless complaint against him and that no action was being taken by the police.

After reviewing the evidence and hearing the testimony of both parties I am not satisfied that the tenant has proven his claim by substantiating the four grounds as listed above. The tenant submitted a CD as part of his evidence. The quality of sound is poor and limited in usefulness. When a party submits digital evidence they bear the responsibility to ensure that it is in a format that can be played and of quality that is reasonable. In addition, in the tenants own testimony he stated that there is no further police involvement in this matter. Based on the above and on the balance of probabilities I dismiss this portion of the tenants' application.

As the tenant did not pursue the portion of his application seeking to have the landlord comply with the Act, regulation or tenancy agreement, I hereby dismiss that portion of his application.

The tenant has not been successful in his application.

I address the landlords claim and my findings as follows:

Landlords First Claim - The landlord is seeking \$151.20 for the replacement of locks and the labour to do that work, \$40.00 for suite cleaning, \$110.25 for carpet cleaning and \$10.00 for a laundry card. The tenant agrees with these claims. Based on that agreement the landlord is entitled to \$311.45.

Landlords Second Claim – The landlord is seeking \$673.21 for loss of revenue. The landlords stated that the tenant was restricting access and that the landlords have not been able to rent the unit as a result. The landlords stated that as of today's hearing they are still doing some cleaning and painting and have yet to rent the unit. The tenant disputes this claim. The tenant stated that the landlords were not restricted access to the unit and that they were able to show it as needed. The tenant stated that he feels he shouldn't have to pay for March due to the landlords desire to update the condition of the unit. The landlord stated that access to the unit was restricted by the tenant changing the locks however the tenant advised the locks were changed three years ago. The tenant stated that landlords were free to change them at any time but only became upset when he notified them that he would be moving out. The tenant stated that the landlord did not notify him that they wished to change the locks or request access.

As stated earlier in this decision, the applicant must prove their claim. The landlord has not provided any evidence that requests were made to access the suite nor to have the locks changed. The landlords were silent as to the locks having been changed three years ago. Based on the above, the landlords have failed to meet all four grounds as required and I must dismiss this portion of their application.

As the landlords have been partially successful they are entitled to the recovery of the \$50.00 filing fee.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord has established a claim for \$361.45. I order that the landlord retain that amount from the deposit in full satisfaction of the claim and that they return the remaining \$1.05 within 15 days of receiving this decision. I grant the tenant an order under section 67 for the balance due of \$1.05. Should it be necessary, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: March 19, 2015

Residential Tenancy Branch

