



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, MND, & FF

Introduction:

These hearing dealt with an application by the landlord for a monetary claim related to non-payment of rent and damage to the rental unit. The original hearing was scheduled on October 21, 2008. During this hearing the landlord's agent requested an adjournment due to health problems that the landlord was having which kept him from appearing. I adjourned the hearing to December 8, 2008. The tenant appeared for both hearings.

During the hearing on December 8, 2008 the tenant requested an adjournment to submit evidence which he indicated he was unable to collect and serve in time for this hearing. I denied the tenant's request. The tenant has know of this hearing for approximately four months and I find that the tenant had more than sufficient notice and time to prepare a defence in response to the landlord's application.

Issues to be Determined:

Has the landlord established a monetary claim related to non-payment of rent and damage to the rental unit?

Background and Evidence:

This tenancy apparently began in August 2007 for the monthly rent of \$525.00 to \$575.00 per month. The landlord stated that the monthly rent was to be \$575.00 but he reduced it by \$50.00 not the tenant's request. The tenant stated that the rent was \$550.00 per month. The parties did not enter into a written tenancy agreement.

The landlord stated that he conducted move in and move out condition inspection reports but he did not submit them for evidence. The landlord alleges that the tenant failed to pay rent for July and August 2008 and caused significant damage to the rental unit which required drywall repair, painting, and carpet cleaning. The landlord submitted some photographs which he stated were of the rental unit.

The tenant denied any damage to the rental unit and also denied owing the landlord for any rent. However, when I questioned the tenant respecting a copy of a written note submitted by the landlord indicating that he would pay portions of the outstanding rent in August 2008 the tenant stated that he owed the landlord half a month's rent. The tenant also stated that the landlord never provided receipts and that the dates claimed by the

landlord were not accurate. The tenant stated he was to pay an outstanding amount for August 2008 and his future rent for September and October 2008. The tenant vacated the rental unit as of August 30, 2008.

Analysis:

The landlord is attempting to establish a monetary claim for damages suffered due to actions of the tenant. To establish a monetary claim the landlord has the burden of proving that he suffered damages and that he suffered damages due to a breach of contract by the tenant.

I cannot rely on any of the oral submissions of the parties due to it being inconsistent. The landlord, in the absence of a written contract, was unable to establish what the monthly rent was. The landlord stated it was originally \$575.00 and then reduced to \$525.00, while the tenant submitted the rent was \$550.00. The landlord was also unable to clearly indicate when the tenancy began. I accept the evidence of the tenant that the tenancy started on August 1, 2007.

The landlord has not provided any evidence, such as a ledger, showing when the rent was paid or in what amount. The only evidence before me is a hand written note dated August 11, 2008 which indicates that the tenant was going to pay a sum of \$500.00 by August 15, 2008 and a further sum of \$1,500.00 by August 22, 2008. This note does not indicate what these amounts represent, for example, previous outstanding balances. The landlord provided another note dated August 22, 2008 which states that he would pay his outstanding rent for July and August 2008 by August 26, 2008. However, this note does not indicate any amount for the sum owed. The tenant has only conceded to owing the landlord for the sum of half a months rent for August 2008.

Respecting the landlord's claim for damages to the rental unit, the landlord provided some photographs. There is no indication of when the photographs were taken, except for a day in 2008. I have no evidence of the condition of the rental unit prior to the start of the tenancy and no way to determine if the tenant caused the damages claimed. The landlord has the burden of proving that the tenant caused the damages and that they damages are beyond normal wear and tear. The tenant denies causing any damage to the rental unit.

I find that the landlord has failed to establish his claim for damages under the *Act*. Given the contradictions in the oral testimony of the parties, including the inconsistency of the monthly amount of rent and lack of any documentation of the rent payments, I find that the landlord has not established the claim for two months of non-payment of rent. Similarly, in the absence of a move in condition and move out condition inspections I have no basis on which to determine whether the landlord's claim for damages was a result of the tenant's actions.

Conclusion:

I dismiss the landlord's application without leave to re-apply. The landlord has failed to meet the burden of proof, on the balance of probabilities, that any damages were suffered due to a breach of the tenancy agreement or *Act* by the tenant.

Dated December 08, 2008.

Dispute Resolution Officer