

DECISION

Dispute Codes DRI, CNR, MNSD, RP FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for unpaid rent, to dispute an additional rent increase, a Monetary Order for the return of the security deposit, to order the landlord to make repairs to the rental property, and to recover the filing fee from the landlord for this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, served in person to the landlord on March 18, 2009 at approximately 6:00 p.m. in the presence of the tenant's boyfriend.

The tenant appeared gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The tenant stated that she has vacated the rental unit, based on the 10 Day Notice to End Tenancy, and is requesting to amend her application to withdraw her requests to cancel the notice to end tenancy for unpaid rent, to dispute the rent increase and to order the landlord to make repairs to the unit. The tenant is proceeding with her application to apply for the return of her damage deposit and to recover the filing fee for this application.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to a Monetary Order under section 38 of the *Act* for return of her security deposit and to recover the filing fee pursuant to section 72 of the *Residential Tenancy Act*

Background and Evidence

The tenant testified that her tenancy began in unit # 205 on November 1, 2007 and that rent was payable on the first of each month in the amount of \$715.00. The tenant stated that a move in inspection was conducted when she took possession of unit #205, that she was given a copy of the tenancy agreement for unit #205, and that she had paid a security deposit of \$350.00 on approximately October 16, 2007.

The tenant testified that she moved into unit # 408 of the same rental building, on December 1, 2008, and that the current landlord refused to do a move out inspection of unit # 205 and that the landlord refused to do a move in inspection of unit # 408. The tenant testified that she had requested a tenancy agreement from the landlord on several occasions, when she was paying her rent in the presence of her witness and that the landlord kept saying she would get a tenancy agreement to her; however the tenant stated she never received a tenancy agreement for unit #408.

The tenant stated that the landlord wanted the tenant to pay a new security deposit for unit # 408 in the amount of \$400.00 and that when the landlord asked for the security deposit the tenant replied by saying she wanted her security deposit for unit # 205 to be returned and a new tenancy agreement issued for unit # 408. The tenant testified that the landlord told the tenant the security deposits are not transferable.

The tenant testified that she moved into unit # 408 based on a verbal arrangement with the landlord that the rent would continue to be \$715.00 per month, however the landlord told the tenant in January 2009 that the rent was \$800.00 effective January 1, 2009. The tenant testified that the landlord did not issue a written notice for the rent increase.

The tenant testified that the landlord issued a 10 Day Notice to End Tenancy for unpaid security deposit and rent, dated March 9, 2009 and posted it on the door of unit # 408 later in the evening on March 9, 2009.

The tenant advised that she moved out of the rental unit on March 27, 2009, based on the notice to end tenancy and that the landlord would not conduct a move out inspection. The tenant testified that the landlord came to the rental unit while the tenant was moving her possessions out and told the tenant to come and get her when she was ready to do a move out inspection. The tenant stated that when she went to get the landlord to do the move out inspection, that the landlord said she wasn't available and when the tenant requested a time to conduct the move out inspection, the tenant testified that the landlord told her that the landlord did not have any time for the tenant.

The tenant stated that she still has the keys for the apartment because the landlord was not available for the tenant to return the keys to her.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the absence of documentary evidence which proves that a security deposit was paid, the date it was paid, and the amount that was paid, in relation to the tenancy of unit #205, I find that the tenant has failed to prove that a damage or loss exists and dismiss her claim with leave to reapply.

Conclusion

I HEREBY DISMISS the tenant's application 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: April 27, 2009.

Dispute Resolution Officer