



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing on the Tenant on August 06, 2009 at the Tenant's cousin's rental unit in this residential complex. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit; for a monetary order for unpaid rent; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on November 15, 2008; that the Tenant paid a security deposit of \$420.00 on October 13, 2008; that the Tenant was required to pay monthly rent of \$840.00; that the Tenant did not pay rent when it was due on May 01, 2009; that the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent on May 06, 2009; and that the Tenant vacated the rental unit sometime prior to May 15, 2009.

In the Application for Dispute Resolution the Landlord declared that it was seeking compensation of \$840.00 in unpaid rent from June of 2009. The Agent for the Landlord

stated that the claim for rent from June was an administrative error and that the Landlord was actually seeking compensation for unpaid rent from May of 2009.

The Agent for the Landlord stated that she served the Tenant's cousin with a letter on November 13, 2009, in which the Landlord clarifies that it is seeking compensation for unpaid rent from May of 2009. She stated that she does not know if the Tenant was living with the cousin, as he advised her that the Tenant was only visiting him.

The Agent for the Landlord stated that new tenants moved into this rental unit in June of 2009 and the Landlord is not seeking compensation for rent from that month.

The Agent for the Landlord stated that she was advised by two other agents for this Landlord that they had spent six or eight hours cleaning the rental unit, for which the Landlord is seeking compensation of \$160.00. She stated that these employees had submitted a copy of an invoice for their labour to the Landlord but that invoice has not been submitted in evidence.

The Agent for the Landlord stated that she was advised by two other agents for this Landlord that the carpets in the rental unit required cleaning, for which the Landlord is seeking compensation of \$60.00. She stated that these employees submitted an invoice for cleaning the carpets to the Landlord but that invoice has not been submitted in evidence.

Analysis

I find that the additional evidence that was served to the Tenant's cousin on November 13, 2009 was not served in accordance with section 88 of the *Act*. Although section 88(e) of the *Act* allows evidence to be served by leaving a copy of it at the person's residence with an adult who apparently resides with the Tenant, I find that the Landlord has submitted no evidence that would cause me to conclude that the Tenant was residing with his cousin on November 13, 2009. As the additional evidence that was given to the Tenant's cousin on November 13, 2009 was not served in accordance with the *Act*, I find that the Tenant has not been properly notified that the Landlord is actually seeking compensation for unpaid rent from May of 2009, as opposed to unpaid rent from June of 2009.

As the Landlord has not provided the Tenant with full particulars of the claim for compensation for unpaid rent from May of 2009, as required by section 59(2)(b) of the *Act*, I hereby dismiss the Landlord's Application for Compensation for Unpaid Rent from May of 2009, with leave to reapply on that specific issue.

As the Agent for the Landlord declared that the Tenant does not owe rent for June of 2009, I dismiss the Landlord's claim for compensation for unpaid rent from June of 2009.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted insufficient evidence to establish that the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. In reaching this conclusion, I find that the Landlord submitted no documentary evidence, such as a condition inspection report, which describes the condition of the rental unit at the end of the tenancy; that the Landlord submitted no photographs that depict the condition of the rental unit at the end of the tenancy; that the Landlord submitted no invoices to establish that the rental unit was cleaned by the Landlord at the end of the tenancy; and that the agents for the Landlord who viewed the rental unit at the end of the tenancy did not testify regarding their observations. I do not find that the hearsay evidence provided by the Agent for the Landlord who attended the hearing to be enough to cause me to conclude that the rental unit required cleaning at the end of the tenancy. As the Landlord has failed to establish that the Tenant did not comply with section 37(2) of the *Act*, I hereby dismiss the Landlord's application for compensation for cleaning the rental unit and for cleaning the carpet.

Conclusion

As the Landlord failed to establish a monetary claim, I am unable to authorize the Landlord to retain any portion of the security deposit. The Landlord retains the right to file another Application for Dispute Resolution claiming against the security deposit, having due regard for section 38(1)(b) of the *Act*.

I find that the Landlord's application has been without merit, and I therefore dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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: November 24, 2009.

Dispute Resolution Officer