

DECISION

Dispute Codes MND MNR MNDC FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, for unpaid rent, for money owed or compensation for damage or loss under the Act, other reasons, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with Section 89 of the Act sent via registered mail. The registered mail receipts submitted into evidence show stamp dates of August 21, 2009, two days after the initial application, and August 02, 2009 which is prior to the amended application date of September 02, 2009. Upon further discussion and review of the Canada Post tracking it was confirmed that the second registered mail was in fact delivered to the Post Office on September 02, 2009 and not August 02, 2009 as displayed by the Canada Post stamp. Mail receipt and tracking numbers were provided in the Landlord's documentary evidence.

The Landlord advised that his first registered mail package was returned to him as he had listed an incorrect address on the envelope. The Landlord argued that the Tenant is residing with the same roommate that he resided within the Landlord's rental unit and they are now residing in a house located on a corner. The Landlord wrote the wrong street name on the first envelope, which was returned, so the Landlord sent a second registered mail package addressed to the adjoining street with the amended application for dispute resolution. The Landlord provided testimony that he is certain that the Tenant is residing at this location.

I accept the Landlord's testimony that the first registered mail was returned to the Landlord due to an incorrect address and that the second package, which included the amended application, was sent to the correct address for where the Tenant resides. The Tenant is deemed to have received the hearing documents on September 7, 2009 five days after they were mailed, in accordance with Section 90 of the Act.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. The Tenant did not appear despite being served notification of the hearing in accordance with the Act.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that he entered into a verbal month to month tenancy agreement with the Tenant who took occupancy of the rental unit sometime in 2008. The Landlord then changed his testimony to state that the Tenant took occupancy sometime around December 2007. The Landlord advised that a second tenant took occupancy in the spring, approximately April 2008 and neither tenant were charged a security deposit.

The Landlord advised that rent was payable on the first of each month in the total amount of \$700.00. The second tenant's rent of \$350.00 per month was paid directly to the Landlord from Social Services while the Tenant in question paid his monthly rent of \$350.00 directly to the Landlord either by cheque or in cash.

The Landlord confirmed that his evidence consisted of Canada Post receipts, a letter authorizing his girlfriend to speak on his behalf, a hand written list outlining his monetary claim, and receipts for materials purchased for the rental unit.

I asked the Landlord why he had not submitted any documentary evidence that would prove that the Tenant had any dealings with him at which time the Landlord requested that I speak to his girlfriend.

The Girlfriend attended and requested that they be allowed to submit additional evidence after the hearing to prove that this person was a Tenant in the rental unit. The Girlfriend argued that they have attended previous hearings where they were allowed to submit evidence after the hearing and that if I would not allow additional evidence then they should be allowed to reapply.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord 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, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 Tenant in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the Applicant Landlord followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

The Landlord provided testimony that he had a verbal tenancy agreement with the Tenant however the Landlord contradicted his own testimony as to when the alleged verbal tenancy began. First the Landlord stated it began sometime in 2008 and then changed his testimony to say the tenancy began sometime in December 2007. I note that in the presence of this contradiction the Landlord was not able to provide a consistent account of the standard terms which form part of the alleged tenancy agreement.

I denied the Landlord's requests to submit additional evidence after the hearing, in accordance with section 11.5(b) of the Residential Tenancy Branch Rules of Procedure. I found that, in the absence of the Respondent, if I were to accept additional evidence after the hearing it would be unfairly prejudicial to the Respondent.

After a review of the evidence supplied by the Landlord and in the presence of the Landlord's contradictory testimony, I find that the Landlord has failed to prove the test for damage or loss as listed above, and I hereby dismiss the Landlord's application, without leave to reapply.

As the Landlord has not been successful with his claim I decline to award him recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's claim, without 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: December 18, 2009.

Dispute Resolution Officer