

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit 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 on September 17, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant acknowledged receipt of the hearing package.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that the evidence provided by the Landlord were pictures of someone else's home. The Tenant argued that she had rented a rancher style home without a basement or a fenced yard.

The Landlord testified and confirmed that it was possible that the photo evidence was not applicable to this Tenant's tenancy. The Landlord also stated that he could not say for certain that the repairs and amounts claimed were in relation to the Tenant named in this application for dispute resolution.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Upon hearing the testimony from both parties I have determined that the Landlord's documentary evidence does not apply to the Tenant named on the application. Based on the aforementioned I find that the Landlord has failed to prove the test for damage and loss as listed above and I hereby dismiss the Landlord's claim.

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: January 05, 2010.

Dispute Resolution Officer