

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for damage to the unit site or property and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the Act sent via registered mail on January 22, 2010. Canada Post receipt numbers were provided in the Landlord's evidence along with a copy of the print out from the Canada Post website which shows that the Tenant signed for the hearing package on January 28, 2010.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. The Tenant failed to attend despite being served notice of today's hearing in accordance with the Act.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the unit under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on September 5, 2008 and ended sometime in February or March 2009. Rent was payable on the first of each month in the amount of \$349.00 and the Tenant did not pay a security deposit.

The Landlord testified and could not provide an exact date of when the Tenant vacated the rental unit. The Landlord referred to her documentary evidence of a written notice to end tenancy issued by the Tenant on January 19, 2009 to end the tenancy effective March 1, 2009.

The Landlord could not provide an explanation why the notices for the move-out inspection listed dates of February 27, 2009, February 28, 2009 and March 2, 2009 and the actual move-out inspection form was completed on February 2, 2009.

The Landlord then referred to her photo evidence in support of her testimony that there was damage caused to the rental unit. The Landlord could not provide an explanation why the photos are dated January 29, 2009 when the tenancy was not scheduled to end until March 1, 2009.

The Landlord argued that the invoice provided in her evidence, dated July 27, 2009, was the Landlord's proof that the Tenant damaged the rental unit which cost the Landlord \$3,289.53 to repair. The Landlord stated that the unit was not re-rented after the Tenant vacated so there was no need to complete the repairs in a timely fashion. The Landlord could not provide testimony about how many hours of labour was required to repair the rental unit.

The Landlord is seeking a monetary order in the amount of \$1,420.40 which is comprised of \$3,289.53 for the cost of repairs, less \$369.13 previously paid by the Tenant, less \$1,500.00 reduction of charge backs agreed to by the Landlord.

Analysis

All of the testimony and documentary evidence was carefully considered.

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

The Landlord provided contradictory evidence and/or failed to prove the following:

- when the tenancy ended

- why the move out inspection report is dated February 2, 2009 yet the notices to conduct the move-out inspection which were issued to the Tenant listing February 27, 2009, February 28, 2009 and March 2, 2009 as the dates of the move-out inspection
- why the photos of the damaged rental unit are dated January 29, 2009
- why the invoice for repairs is dated July 27, 2009, six months after the tenancy was to have ended
- why the repair invoice does not list the address where the repairs were completed, or were there several units worked on by this contractor
- how many hours of labour the Landlord paid for the repairs and what specific work was performed.

Based on the aforementioned 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 claim, without leave to reapply.

As the Landlord has not been successful with their application I decline to award them 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: March 08, 2010.

Dispute Resolution Officer