

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled for 11:00 a.m. on this date to deal with the landlord's application for a Monetary Order for damage to the rental unit, damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard.

As a preliminary issue, the respondent claimed that he was not the tenant and had not entered into a tenancy agreement with the landlord. I proceeded to hear from both parties with respect to the nature of the tenancy agreement. The respondent provided a telephone number of his older son who the respondent claimed was the tenant. I placed a call to the telephone number provided by the respondent but received only a recording advising that the subscriber did not have voice mail set up. After hearing from both parties about the tenancy relationship, I reserved judgement on that issue and continued to hear from the landlord with respect to the claims for damages and loss in the event I found a tenancy between the parties.

After hearing from the parties with respect to the tenancy relationship and during the testimony concerning damages and loss, at approximately 12:20 p.m., the respondent advised that he needed a two minute break in order to take medication. The break was granted and the teleconference call lines were left open. At approximately 12:25 pm. the respondent had yet to return to the telephone and I continued to hear from the applicant without the respondent present. The teleconference ended at approximately 12:40 p.m. and the respondent did not reappear by that time.

Issues(s) to be Decided

1. Was there a tenancy agreement between the parties and has the applicant shown that the *Residential Tenancy Act* applies to the relationship between the parties?
2. If there is a tenancy agreement between the parties, has the applicant established an entitlement to compensation from the respondent?
3. Is the applicant entitled to retain the security deposit?
4. Award of the filing fee.

Background and Evidence

The applicant testified as follows. The applicant had advertised the rental unit for rent online and on September 4, 2008 the respondent telephoned the applicant with respect to renting the applicant's condominium for his son. On September 5, 2009 the applicant met the respondent and a friend of the respondent at the rental unit. The three parties then met at a coffee shop to discuss the tenancy and the respondent's friend gave the applicant a security deposit of \$400.00 and an email address to contact the respondent and friend. The respondent asked if a tenancy agreement needed to be signed and applicant responded that a written tenancy agreement was not required. An arrangement was made for the applicant to provide keys on September 12, 2009 and collect one-half of a month's rent for September 15 – 30, 2008. The applicant collected \$650.00 from the respondent's son and gave the keys to the son. The respondent's two sons proceeded to move into the rental unit.

On September 18, 2009 the applicant received \$2,500.00 from the respondent's son for rent. On September 24, 2008 the respondent's son gave the applicant written notice to end the tenancy as of November 1, 2008. The written notice is signed by the respondent's son as a tenant and signed by the applicant as the landlord. Also on September 24, 2009 the applicant returned \$1,250.00 to the respondent's son with the notation "return rent 507 Nov." The applicant began receiving complaints about significant disturbances originating from the rental unit. The respondent's sons did not vacate until December 2, 2008. On December 22, 2008 the respondent paid the

applicant rent for November 2008 and in May 2009 paid the applicant \$100.00 to cover the move-out fee charged by the strata.

The respondent was of the position his older son was the tenant and his son should be held responsible to the landlord. The respondent claims he did not pay the security deposit to the landlord, did not pay rent, did not sign a tenancy agreement and the landlord communicated with his friend and not him about issues with his sons at the rental unit. The respondent also claimed that he clearly stated to the applicant that his older son was an adult and to deal with the son about the tenancy matters. The respondent was of the position he was merely acting on behalf of his son in viewing the rental unit and discussing matters with the applicant on September 4 and 5, 2008. Upon enquiry, the respondent acknowledged his friend corresponded with the applicant about matters involving the rental unit; however, explained that his friend was merely trying to be an intermediary.

As evidence for the hearing, the applicant provided copies of numerous email communications to and from him and the respondent's friend, neighbours of the rental unit and strata members. In addition, the applicant provided copies of receipts and photographs in support of his claim for damages and loss with respect to the rental unit.

Analysis

I have reviewed the documentary evidence submitted by the applicant and have considered all of the verbal testimony provided to me. I make the following findings.

The Act requires that a written tenancy agreement be prepared by a landlord and that the tenancy agreement identify the correct legal names of the tenant and landlord. Clearly, had the applicant prepared a written tenancy agreement much of the dispute concerning the identity of the tenant(s) would have been avoided. Nonetheless, the Act does recognize verbal tenancy agreements and the rights of obligations of a party to a verbal tenancy agreement are enforceable. The most obvious difficulty with enforcing

verbal tenancy agreements is when parties provide disputed evidence concerning a term of the tenancy agreement, including the identity of the tenant(s). In this case, I am tasked with trying to determine whether the respondent was the tenant under a verbal tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without more supportive evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the balance of probabilities, I am not satisfied that the respondent was the tenant under the tenancy agreement when I consider the following undisputed evidence:

- The security deposit was paid by the respondent's friend;
- The keys to the rental unit were given to the respondent's son;
- The respondent's son paid the applicant rent;
- The respondent's son gave the notice to end tenancy as a "tenant" that the applicant accepted and relied upon as a "landlord";
- The majority of communications were made to the email address of the respondent's friend and the applicant made frequent requests to pass information along to the respondent's son(s).

In determining there is insufficient evidence the respondent is a tenant, I have given most weight to the notice to end tenancy given by the respondent's son. I find that the applicant's acceptance and reliance upon the written notice from the respondent's son is inconsistent with the applicant's position that the respondent was the tenant. If the applicant was of the belief that the respondent was the tenant, the respondent's son would not have the authority to end the tenancy agreement.

In light of the above findings, I dismiss the applicant's case against the respondent.

Conclusion

This application has been dismissed as the applicant failed to establish the respondent was a tenant.

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 24, 2010.

Dispute Resolution Officer