

Decision

Dispute Codes: MNDC FF

Introduction

This is the Tenant's application for a Monetary Order for compensation for damage or loss; and to recover the cost of the filing fee from the Landlord.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to compensation for damage or loss, pursuant to the provisions of Section 67 of the Residential Tenancy Act (the "Act")?

Background and Evidence

The tenancy ended on February 1, 2010, as a result of the Landlord issuing a 2 month Notice to End Tenancy for Landlord's Use. The Tenant was paid one month's compensation, pursuant to the provisions of Section 51 of the Act. Monthly rent was \$750.00, due on the first of each month.

The Tenant gave the following testimony:

The Tenant testified that the upstairs tenant in the rental property was smoking marijuana. He stated that he told the Landlord, but nothing was done to stop the upstairs tenant or to evict her. The Tenant testified that he is a recovering addict and had a 10 year old son.

The Tenant testified that the Landlord told him that the upstairs Tenant had some anxiety problems, and that the Landlord was not going to do anything about her marijuana use.

The Tenant stated that at the time of filing his application, he thought it would take him three months to find suitable accommodation for him and his son. The Tenant testified that he found accommodation for March, 2010. Therefore, the Tenant amended his application to claim for the equivalent of one month's rent, instead of the three months the Tenant had previously applied for. The Tenant stated that he was seeking this compensation for loss of enjoyment of the rental unit due to the upstairs tenant's marijuana use and the Landlord's refusal to deal with it. The Tenant also seeks moving expenses in the amount of \$500.00 and recovery of the filing fee.

The Tenant testified that he faxed his moving expenses to the Residential Tenancy Branch in March, 2010, but did not provide the Landlord with copies because she was away on holidays.

The Landlord gave the following testimony:

The Landlord stated that when the Tenant advised her that the upstairs tenant was smoking marijuana on the rental property, the Landlord spoke to the upstairs tenant, who denied smoking marijuana. The Landlord stated that there was no evidence of marijuana use in the rental property. The Landlord provided a written statement from the upstairs tenant in evidence.

The Landlord stated that the Tenant was a difficult person with anger management problems and that another tenant had moved out of the rental property because of his actions.

The Landlord denied being away on holidays in March, 2010, and stated that she was back from holidays on February 10, 2010.

Analysis

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 Sections 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 is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based on testimony of both parties, and the absence of any corroborating documentary evidence from the Tenant, I find that the Tenant has failed to establish his claim for compensation under Section 67 of the Act.

The Tenant has not been successful in his application and is not entitled to recover the cost of the filing fee from the Landlord

The Tenant's application is dismissed in its entirety.

Conclusion

The Tenant's application is dismissed.

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.

June 14, 2010
