



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNC, CNR, MNDC, ERP, LRE, FF

For the landlord – OPR, MNR

Introduction

This decision was set to deal with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were due to be heard together. At the outset of the hearing the tenant attending stated that they have moved from the rental unit and therefore withdrew their application to cancel the One Month Notice to End Tenancy, to cancel the 10 Day Notice to End Tenancy, for an Order for the landlord to make emergency repairs for health and safety reasons and to set or suspend conditions for the landlord to enter the rental unit. The tenant seeks to proceed with her application for a Monetary Order for money owed or compensation under the Act, regulations or tenancy agreement and to recover her filing fee.

The hearing went ahead as scheduled the tenant dialed into the conference call but after 10 minutes the landlord had not dialed into the call. Based on this I find that the landlord has failed to present the merits of their application and their application is dismissed without leave to reapply.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the Act; they were given to the landlords' agent in person on July 21, 2010. The tenant gave sworn testimony that service took place as declared.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant states that this tenancy started on November 01, 2009 and ended on September 01, 2010. Rent for this unit was \$1,350.00 per month and was due on the first of each month. The tenant paid a security deposit to the landlord of \$675.00 sometime around the beginning of the tenancy.

The tenant states that she was in conflict with the landlords' agent. This agent served her with a One Month Notice to End Tenancy for cause and a 10 Day Notice to End Tenancy for unpaid rent. The tenant states there was no justification for these Notices and she decided to move from the rental unit on September 01, 2010. The tenant states she did not pay rent for August, 2010 as she needed this money to help with her moving costs. The tenant seeks to recover the sum of \$1,350.00 from the landlord for her moving costs as she had to borrow this money in order to move. The tenant attending states she would not have had to move from the rental unit except for the actions of the landlords' agent and these unjustified Notices to end tenancy.

The tenant also seeks to recover her filing fee paid for this application.

Analysis

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet any of the components of the above test. The tenants have not submitted any evidence to support their claim of \$1,350.00. By the tenants own admission she states that she withheld her rent for August, 2010 and choose to move from the rental unit due to conflict with the landlords' agent. Consequently I find in this matter that the tenants have not met the burden of proof and I dismiss this application without leave to reapply.



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Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords' application is dismissed 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: September 13, 2010.

Dispute Resolution Officer