

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified that the tenant had on May 5, 6, or 7, 2010 entered into and signed a tenancy agreement and left a security deposit of \$400.00 to begin a month to month tenancy on June 1, 2010 for a monthly rent of \$800.00 due on the 1st of the month.

The landlord further states that the tenant then contacted the building manager 10 days later and told her that she would not be taking the rental unit as she had to move to Edmonton either because of her father or uncle, the landlord could not recall the details.

The tenant testified she had not signed a tenancy agreement but rather that she had some questions, in particular, regarding the next door neighbour. The tenant agrees she left a deposit but that she had been told it was to hold the unit as there were several people interested in the unit.

The tenant further stated that the landlord told her that the neighbour often complained about the neighbours making noise, especially after 7:00 p.m. The tenant states it was after she received this information that she informed the landlord she would not be taking the unit and that she did so on May 6, 2010.

The landlord seeks to retain the security deposit to cover the costs of re-advertising the rental unit to find renters in place of this tenant. The landlord testified the advertisements cost him \$56.00 per week for three weeks and that he was unable to rent the unit until July 2, 2010.

Analysis

When a party in a tenancy makes a claim against the other party they must provide sufficient evidence to support the following four points:

1. The loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. Establishment of the value of the loss;
4. Any steps taken to mitigate the damage or loss.

In this case, the landlord has provided no documentary evidence such as advertisement clippings from local papers or receipts for advertising to establish that a loss exists. Further as the landlord has provided no evidence that a tenancy agreement was entered into, I find the landlord has failed to establish that a loss results from a violation of the *Act*, regulation or tenancy agreement.

The landlord has also provided no evidence to establish the value of any loss he may have suffered nor what steps if any he had taken to mitigate any losses.

Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety.

I find that the tenant is entitled to the return of her security deposit pursuant to Section 38 and grant a monetary order in the amount of **\$400.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: October 04, 2010.

Dispute Resolution Officer