

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on September 1, 2010 the Tenant did not appear.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The Landlord testified that the rental unit has been vacated and there was no need to proceed further for an Order of Possession.

The Landlord gave affirmed testimony that the Tenant was served with a Notice to End Tenancy for non-payment of rent on August 10, 2010 by posting on the door. A copy of the Notice to End Tenancy was not supplied into evidence, but I accept the testimony of the Landlord.

The Landlord testified that the Tenant did not pay rent for the month of August and that she owed the amount of \$985.00, which included the rent payment, partial payment of \$10.00 for July and a late fee charge of \$25.00.

The Landlord further testified that the Tenant left the rental unit in a “mess” and caused damage in the amount of \$4,615.00. However, the Landlord did not submit any evidence of the damage, such a written invoice, estimate or photos of the damage.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the other party pay for the loss requires the claiming party to prove four different elements:

First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord did not submit documentary evidence of the damage by way of invoices, estimates, or photos, nor did he submit supporting testimony. I accept the Landlord's testimony that the Tenant caused damage, but I find that the Landlord did not submit sufficient proof to establish the actual amount required to compensate under the Act. Therefore I dismiss the Landlord's claim for damages to the rental unit in the amount of \$4,615.00.

I find that the Landlord has established a total monetary claim of **\$1,035.00** comprised of **\$985.00** in unpaid rent and the **\$50.00** fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$475.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$560.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due of \$560.00.

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 07, 2010.

Dispute Resolution Officer