



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking a Monetary Order for money owed or compensation for damage or loss under the *Act* for reimbursement of a part of a month's rent and to recover the filing fee from the Landlord.

All parties appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation under section 67 of the *Residential Tenancy Act* and to recover the filing fee?

Background and Evidence

This tenancy ended on August 22, 2009, with a monthly rent of \$1,375.00 payable on the first day of the month. I heard undisputed testimony that the Tenant's last day in the rental unit was August 22, 2009.

The Tenant is seeking a monetary order for \$493.55 for the following:

1. \$443.55 reimbursement for 10 days prorated rent for August 2009 (August 22, 2009 to August 31, 2009)
2. The filing fee--\$50.00

The Tenant's relevant evidence included an Affidavit from a witness, Details of the Dispute, dated August 26, 2010, various emails between the Tenant and the Landlords, beginning August 11, 2010 through August 17, 2010.

In addition to the evidence, the Tenant's relevant testimony included stating that she called Landlord BM at the end of July and informed him she would be moving by the end of August 2009 as she had purchased another, larger place. The Tenant testified that within a week of providing notice, the Landlords approached her to ask if the new tenant could move in earlier in August 2009, which would be a less expensive move for him. The Tenant testified that she did not recall who initiated August 15th as a move out date, but at any rate, she had to postpone that date to August 22 due to her premature son's surgeries.

The Tenant testified and provided evidence she felt pressured by the Landlords to move out early and that Landlord BM agreed to reimburse the portion of the rent via telephone conversations. The Tenant stated that she tried to have the agreement reduced to writing, but was unsuccessful in so doing.

The Tenant stated that she was going through a stressful time, having given premature birth, trying to move to accommodate the needs of her newborn son and trying to vacate the rental unit early.

The Tenant testified that originally she knew she would not be able to have the rental unit cleaned early, but that the Landlords stated she could work out something with the new tenant.

The Tenant testified that her agreement to move out early was a contract situation, with an offer, acceptance and consideration, the consideration being reimbursed a portion of the month's rent.

The Landlord's relevant evidence included a Chronology outlining the facts in dispute, the same email train as provided by the Tenant and an email statement from the new tenant.

Landlord BM testified that at no time did he agree to reimburse the Tenant any funds for moving early, that the Tenant was going to leave early by her choosing and that he was trying to accommodate the new tenant to move in some things early to save money, but that the Tenant had the rental unit until the end of August 2009. Landlord BM further testified he never indicated August 15 as a move out date.

Landlord BM testified that the Tenant benefitted from an earlier move out as the new tenant agreed to clean out the rental unit in exchange for moving some things in early and that the Tenant was reimbursed her full security deposit.

Analysis

Based on the above 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. In this case the Tenant bears the burden to prove a loss, which includes the following 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.

Burden of proof is based on the balance of probabilities which means one version is more likely than another version of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the Tenant submitted insufficient evidence to prove steps one and two, that there was a loss and that any loss occurred due to the actions of the Landlords. The Landlords have denied making any agreement to reimburse a portion of the August 2009 rent in exchange for leaving early. Rather the written proof, the email train provided by both parties, indicated there was never a firm move out date, that the date kept changing to reflect the needs of the Tenant to be with her newborn son and that the Landlords specifically did not agree to reimburse the portion of the month's rent. I find the move out date was the Tenant's choice and therefore I **dismiss** the Tenant's Application.

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*.

Dated: November 16, 2010.

Dispute Resolution Officer