



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, 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.

Both parties appeared, 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 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 sections 38 and 67 of the *Residential Tenancy Act* and to recover the filing fee?

Background and Evidence

The Tenant testified that she paid \$350.00 on July 15 for a security deposit, in cash with no receipt provided, and was to move in the rental unit sometime later in July. The Tenant testified that she called the Landlord some time later in July and said she would not be moving in.

The Tenant supplied no evidence and did not provide clear, credible testimony.

The Landlord testified that the Tenant looked at the rental unit on July 6, 2010 and the Tenant said she would move in at the end of July. The Landlord disputed the fact he received any funds from the Tenant.

There is no dispute that this tenancy ever began.

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 and testimony to prove any step necessary to establish the proof of loss.

The Landlord denied receiving any payment for a security deposit and the Tenant has not submitted any evidence or credible testimony to prove otherwise. 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 29, 2010.

Dispute Resolution Officer