



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, OLC, 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 the filing fee and to recover the filing fee from the Landlord.

The 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. 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 never started, but the Tenant's testimony indicated that he contacted the Landlord after seeing the advertisement online for the rental unit and promptly began discussions with the Landlord in or about June 2010. The Tenant testified that after viewing the rental unit, the Landlord agreed that occupancy could begin in September 2010, as a family member could use the space until then.

The Tenant testified that in subsequent meetings with the Landlord, the Landlord agreed to explore the Tenant's request of adding closets to the rental unit, as there was presently just one closet for the three bedrooms.

The Tenant testified that the Landlord was to arrange with family members to add the closets, but ultimately he declined to add them, causing the Tenant to cancel moving into the rental unit.

The Tenant testified that he paid the Landlord two cash payments as a way of a security deposit, one for \$400.00 during the first week of July and \$160.00 for the second week of July 2010.

When queried, the Tenant responded that he did not receive a receipt for the cash payments as the Landlord never had a pen or paper with him.

I note that the Tenant supplied no documentary evidence.

The Landlord testified that the Tenant first responded to the advertisement and expressed an interest, then declined to pursue the rental unit until 2-3 weeks later. The Landlord stated that the Tenant began inquiring as to whether or not he could make structural changes to the rental unit, and the Landlord said no.

The Landlord stated the Tenant became abrasive and confrontational, causing the Landlord to make the decision to not rent the rental unit to the Tenant.

The Landlord stated that there was never an agreement to rent the rental unit, but that there had just been questions and negotiations about the same.

The Landlord denied there ever was a tenancy and denied ever receiving any funds from the Tenant.

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, in this case the Tenant, has the burden of proof to establish his claim on the civil standard, as follows:

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.

In the circumstances before me the Tenant failed to provide any documentary evidence. The only evidence before me is the disputed oral testimony of the Tenant and the Landlord.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of “facts” is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

I therefore find that the Tenant has failed to submit evidence to establish a monetary claim against the Landlord and I **dismiss** the Tenant’s application without leave to re-apply.

Conclusion

The Tenant’s application is dismissed without leave to re-apply.

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: February 25, 2011.

Residential Tenancy Branch