



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC

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*.

The parties and their witnesses appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

Issue(s) to be Decided

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

Background and Evidence

I heard testimony from the Tenant that this tenancy started on September 1, 2010, and ended on November 1, 2010. The Landlord testified that the tenancy started August 1, 2010. The monthly rent was \$1,300.00 and the Tenant paid one-half of the security deposit, \$325.00.

The testimony indicated that there was no signed tenancy agreement.

The Tenant is claiming compensation in the amount of \$860.00, for the value of her lost possessions, including \$300.00 for a knife set, \$75.00 for dishes, \$30.00 for plastic containers, \$50.00 for bed frame pieces, \$75.00 for a tent, \$300.00 for a snowboarding jacket and \$30.00 for a Christmas tree. In support of her application, the Tenant testified that her tenancy was shared with a roommate, who was equally responsible for paying the rent. The testimony from the Tenant indicated that she had a falling out with her roommate, and although she went to stay with her mother, she did not move out.

I heard testimony from the Tenant that while she was staying with her mother, the roommate called her and said she, the roommate was moving out at the end of October.

The Tenant testified that she was aware that the tenancy was to end at the end of October 2010, and that she had until that time to move her possessions. The Tenant further stated that when she went to the rental unit on October 30, 2010, the Landlord had movers moving out her belongings, at which time she informed them she had not moved out.

The Tenant submitted that she noticed some of her possessions were missing at that time. The Tenant also submitted that the next day, October 31, 2010, she made the final move and again confronted the movers.

Upon query, the Tenant could produce no receipts or further documentation as to the value of the possessions in questions.

In response, the Landlord testified that he had to make an emergency repair on October 30, 2010, to the door locks as the back door had been kicked in.

The Landlord submitted that the only person he had contact with was the roommate, which led him to believe that the Tenant had already vacated the rental unit. The Landlord further submitted that he assumed there was a final vacancy of the rental unit by October 22, 2010, when the roommate moved out.

The Landlord denied taking the Tenant's possessions and submitted that it was possible that the roommate took the items.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 67 of the Act. In order to be successful in obtaining an award for compensation such as rent reduction, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicant/Tenant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In the circumstances before me the Tenant failed to provide any documentary evidence or proof that the Landlord removed the items claimed for. Rather I find that the Tenant's roommate had more access to these items as the Tenant had been away from the rental unit for at least a month. 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 will not likely 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: March 15, 2011.

Residential Tenancy Branch