

DECISION

Dispute Codes CNR, MNDC, FF, O

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present evidence and to make submissions. The parties confirmed that one of the landlords handed the female tenant (the tenant) a 10 Day Notice to End Tenancy for Unpaid Rent on February 8, 2011, and that the tenant handed the male landlord a copy of her dispute resolution hearing package on February 18, 2011. I am satisfied that the parties exchanged these documents with one another in accordance with the *Act*.

The parties agreed that the tenants vacated the rental unit and provided the key to the landlords on February 21, 2011. Since the tenants have vacated the premises, the tenant withdrew her application for cancellation of the landlords' notice to end this tenancy.

During this telephone conference hearing and after the tenant said that she had no further evidence to provide, the tenant encountered difficulty in hearing the other parties participating in the telephone conference. By that point, the only information that needed to be obtained was a confirmation of her current mailing address. Although the tenant disconnected and reconnected a number of times from the telephone booth she called from and the others in the conference could hear her each time, it did not appear that she was able to hear what we were saying. During this period, the male landlord reiterated that he was planning to apply for dispute resolution with respect to issues that the landlords consider outstanding from this tenancy.

Since the tenant had told me earlier in the telephone conference hearing that she had nothing to add to my understanding of her application, I advised the landlord that I would be finalizing my decision in writing and would send it to the addresses we have for the two parties.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for damage and losses arising out of this tenancy? Are the tenants entitled to recover their filing fee for their application from the landlords?

Background and Evidence

This periodic tenancy commenced on September 15, 2010. Monthly rent was set at \$1,500.00, payable on the first of each month. The landlords said that they continued to hold the tenants' \$750.00 security deposit, paid in two installments (i.e., \$450.00 on August 27, 2010 and \$300.00 on September 15, 2010). The parties confirmed that the tenants did not pay their \$1,500.00 rent for February 2011, after the tenant gave her notice to end this tenancy on January 30, 2011 by email and on January 31, 2011 by posting her notice on the male landlord's door.

During the hearing, the tenant said that she had not obtained nor provided copies of any invoices, receipts, photographs or records relating to her application. She said that she had not sent any letters to the landlords requesting a reduction in the rent on the basis of flooding damage to a portion of the rental unit. The tenant entered into written evidence that she realized that she should have obtained renter's insurance to protect from flooding damage but had not. She testified that she had not properly prepared for this hearing, was calling from a telephone booth, and had nothing further to add to my understanding of her application.

The landlords submitted written evidence that this damage was minor, was resolved on both occasions of unusual precipitation quickly, and was limited to a 40 square foot portion of the basement carpet under a couch, which dried quickly.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord was responsible for the loss suffered by the tenants arising out of this tenancy.

The tenant provided insufficient evidence that she suffered damage or loss arising out of this tenancy, nor did she demonstrate that the landlord was responsible for any damage or loss that she may have incurred. She did not raise these issues until she had provided notice of her intention to end this tenancy and learned that the landlords were not willing to let her apply her security deposit to offset a portion of February 2011 rent owing.

I dismiss the tenants' application for dispute resolution as they have not met the burden of proof to entitle them to a monetary award. Since they have been unsuccessful in their application, the tenants bear the costs of filing their application fee for dispute resolution.

Conclusion

I dismiss the tenants' application for a monetary award and recovery of their filing fee without leave to reapply.

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*.