



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes: MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent and damages for loss of rent. The landlord was seeking a monetary order and to keep the security deposit.

A previous hearing was held in September 2010 on the tenant's application to cancel a One-Month Notice for Cause and monetary compensation but that application was withdrawn as settled by the parties. The tenant agreed to vacate on September 6, 2010 and the landlord was issued an Order of Possession effective September 6, 2010.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed and for monetary compensation for loss of rent as damages

Background and Evidence

The tenancy began in June 2010 and rent was set at \$550.00. Both parties agree that the tenant did not pay rent for the rental unit for the month of September and that the tenant vacated sometime in September 2010.

The landlord testified that the rent claim was based on \$150.00 owed for rental arrears and The damages were for a \$550.00 loss incurred due to the tenant's violation of the Act and agreement. The landlord testified that the tenant had illegally rented out another unit in the building without the landlord's knowledge or authorization and absconded with the rental funds and the security deposit collected from the unwitting renter. No evidence was submitted by the landlord.

The tenant stated that as part of their agreement to vacate that was reached at the previous hearing, the parties had verbally agreed that he would pay \$100.00 pro-rated rent for the portion of September that he lived in the unit. However, the tenant denied

all of the other allegations made and stated that he now feels entitled to the full return of his \$275.00 security deposit.

.Analysis

With respect to the rent owed for September 2010, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. In this instance, I accept the testimony of both parties that the tenant only owed a portion of rent for September and I set this pro-rated amount at \$125.00.

With respect to the landlord's claim for damages of \$550.00, I find that an applicant's right to claim damages from another party is dealt with in section 7 of the Act which provides that, if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

I find that, if the landlord's testimony that the tenant had wrongfully rented another unit in the building had been supported by adequate evidence, this action would have qualified as a violation of the Act and agreement. However, only disputed testimony was offered regarding this allegation. In addition to the above, in order to meet element 3 of the test for damages, the landlord would then have been required to prove that the loss being claimed was genuinely incurred. As no records nor evidence of any kind had been submitted to confirm the loss, I find that the landlord has not sufficiently met the test for damages and this portion of the landlord's claim must therefore be dismissed.

Given the above, I find that the landlord has established a total monetary claim of \$150.00, comprised of \$125.00 owed for part of September and \$25.00 for half of the cost of the application. I order that the landlord may retain this amount from the

\$275.00 security deposit held in trust for the tenant, leaving a balance of \$125.00 still owed to the tenant.

Conclusion

I hereby grant the tenant a monetary order under section 67 for \$125.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is dismissed without leave.

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 2011.

Residential Tenancy Branch