



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent to him by registered mail on December 18, 2010. I am satisfied that the tenant served his hearing package and evidence to the landlord in accordance with the *Act*. The landlord provided no written evidence.

At the commencement of the hearing, the parties confirmed that the landlord returned the tenant's security deposit to the tenant on December 20, 2010. The tenant withdrew his application for a return of his security deposit on the basis of his receipt of the security deposit.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

Although the parties did not provide a copy of their Residential Tenancy Agreement, they confirmed that their Agreement commenced this month-to-month tenancy on November 1, 2010. Monthly rent was set at \$1,100.00, payable in advance on the first of each month. The landlord has returned the tenant's \$550.00 security deposit paid on September 20, 2010.

The parties agreed that the tenant paid his November 2010 rent on October 30, 2010. At that time, the landlord said that the tenant realized that the landlord had not completed outside work in the back yard that the landlord had been unable to finish due to inclement weather. The tenant testified that the landlord's failure to finish work that was supposed to be completed by the time he moved in caused him such concern that he sent the landlord a registered letter on November 6, 2010 advising him that he was not moving into the rental unit. He asked the landlord to advertise the rental unit as soon as possible in order to try to recover his November rent and security deposit.

The tenant's application for a monetary award of \$1,600.00 included the recovery of his security deposit and his November 2010 rent. He and his witness who drove by the rental property on November 26, 2010 maintained that the landlord had rented the premises to a new tenant by that date. The tenant's witness asserted that the tenant must have been residing in the rental unit well in advance of November 26, 2010 due to the cable connection that seemed in place and the furnishings that the new tenant had brought to the premises.

The landlord said that he advertised the rental unit's availability on Craigslist as soon as he received the tenant's notice to end this tenancy. He said that he was able to find a new tenant for December 1, 2010. He testified that he may have allowed the new tenant to move into this rental unit a few days early, but denied having received any rent from the new tenant for November 2010.

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.

Although I have given the tenant's application careful consideration, I am not satisfied that he has demonstrated that he is entitled to a monetary award to recover a portion of the November 2010 rent that he paid the landlord.

Section 16 of the *Act* establishes that the rights and obligations of a landlord and tenant "take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." As such, the tenant was responsible for paying

November 2010 rent and did not comply with the terms of his tenancy agreement that required him to provide notice of his ending the tenancy by December 1, 2010 before November 1, 2010. Since he did not do so, the tenant was responsible under section 7(1) of the *Act* for failing to comply with the provisions of the *Act* involving a tenant's notice to end a tenancy.

Section 7(2) of the *Act* also requires a landlord to try to mitigate a tenant's losses. I accept the landlord's undisputed testimony that he did advertise the rental premises on Craigslist and was successful in re-renting the premises to another tenant as of December 1, 2010. By taking this action, the landlord mitigated the tenant's exposure to liability for the tenant's rent responsibilities for December 2010.

The burden of proof for demonstrating a monetary award rests with the party making the application, in this case the tenant. The landlord has given sworn testimony that he did not receive any rent from the new tenants in this rental unit for November 2010.

Although the tenant and his witness have given evidence that the new tenants were in fact occupying the rental unit by November 26, 2010, the landlord testified that he may have let them occupy the rental unit a few days early without requiring them to pay rent for November 2010. Under these circumstances, I find it equally possible that the landlord did or did not receive rent for November 2010 from the new tenants.

I dismiss the tenant's application for a monetary award because the tenant has not satisfied the burden of proof of demonstrating his entitlement to a monetary award for rent that the tenant believes the landlord may have received from the new tenants. I find that the tenant ended this tenancy during November 2010 and remains fully responsible for the rent that he paid the landlord for November 2010. The tenant bears no responsibility for rent for the premises for December 2010.

Since the tenant has not been successful in his application, I make no monetary award regarding his filing fee for his application.

Conclusion

I dismiss the tenant's application 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*.