



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNSD, MNDC

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for damage to the unit and costs of cleaning and to retain the security deposit in partial compensation for the claim.

Despite registered mail service sent on December 3, 2010, the tenant did not appear.

Preliminary Matters

The landlord had not submitted any evidence and requested an adjournment for this purpose.

Residential Tenancy Rules of Procedure, Rule 3.1, states that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding. If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent prior to the hearing as required, the Dispute Resolution Officer must apply Rule 11.6 which deals with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance. This rule permits the Dispute Resolution Officer to adjourn a dispute resolution proceeding in cases where the party claims that the missing evidence was submitted *to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding*. However, in this instance the evidence in question was never submitted to the branch.

In this case the applicant was asking to be given more time to submit the necessary evidence to prove the monetary claim. In such circumstances, The Rules of Procedure, Rule 6.1, specifies what factors must be considered in allowing an adjournment for the purpose of receiving additional evidence from one, or both, parties. One of the factors to be weighed is the degree to which the need for the adjournment arises out of the actions or neglect of the party seeking the adjournment. In this instance, the landlord's

application was made early in December 2010 and the hearing was scheduled to be heard four months later. I find that, during this period, the landlord failed to submit relevant documents that were under the control of the landlord. I find that the applicant had a fair opportunity to make evidentiary submissions. In any case, before one party requests an adjournment, the party must seek the consent the other party first.

Given the above I found that delaying the hearing further, particularly for the purpose of allowing the applicant a second opportunity to submit evidence that could have been served on the other party and placed into evidence in advance of the hearing, would be prejudicial to the respondent and contrary to natural justice. I found that there was not adequate justification under the Act and Rules of Procedure to support an adjournment to allow the landlord to submit additional evidence.

Issue(s) to be Decided

The landlord was seeking monetary compensation cleaning and repairs and the issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for cleaning and damages.

Background and Evidence

The landlord testified that the tenancy began on March 15, 2008 and the tenant vacated on September 3, 2010 leaving the unit not reasonably clean and damaged.

The landlord did not submit evidence to confirm the existence of the tenancy nor the cost of the damages. However the landlord gave verbal testimony stating that costs were incurred due to the tenant's failure to clean the unit and leave it in good repair at the end of the tenancy as required under the Act. The landlord was claiming \$1,400.00 in compensation.

Analysis

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 steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to 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 respondent. Once that has been established, the claimant must then provide evidence that can verify the actual cost of the loss or damage.

In this instance I find that the landlord's claims have not satisfied the test for damages. Based on the testimony and evidence presented during these proceedings, I find that the landlord's monetary claim has no merit due to insufficient evidentiary proof and must be dismissed.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety 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*.

Dated: April 2011.

Residential Tenancy Branch