Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPC OPB MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for cause and for breach of an agreement plus a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 20, 2011. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on May 25, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on April 12, 2010 and switched to a month to month tenancy after April 30, 2011. Rent was payable on the first of each month in the amount of $2,100.00 and on April 11, 2010 the Tenant paid $1,050.00 as the security deposit. A move in inspection report was completed on

April 12, 2010 and a move out inspection report was completed on June 3, 2011 in the presence of the Tenant.

The Landlord testified that the Tenant refused to sign the move out inspection report to authorize the Landlord to retain $200.00 from the security deposit to cover the cost of the fine issued by the strata corporation. The Landlord states that she believes the Tenant was provided and signed a form "k" and was provided copies of the strata bylaws however she does not have a copy of the form "k".

The Landlord confirmed she is withdrawing her request for an Order of Possession as the Tenant vacated the unit on June 3, 2011.

Analysis

I have carefully considered the aforementioned and the Landlord's evidence which consisted of, among other things, copies of the tenant ledger, the tenancy agreement, 1 Month Notice to End Tenancy for Cause, notices and letters to the Tenant, and a copy of a payment made by the Landlord to the strata corp.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on 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 Tenant.

In the absence of proof that the Tenant received a copy of the strata bylaws and signed a copy of the strata form "k", I find there to be insufficient evidence to support the Tenant breached an agreement with the Landlord. Based on the aforementioned I dismiss the Landlord's claim to recover the cost of the strata fine, without leave to reapply.

The Landlord has not been successful with their application; therefore the Landlord must bear the burden of the cost to file their application.

All deposits currently held by the Landlord are to be administered in accordance with section 38 of the Act.

Conclusion

I HEREBY DISMISS the Landlord'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*.

Dated: June 13, 2011.

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Residential Tenancy Branch