



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the landlord stated that the tenant moved out of the rental unit on December 14th, 2010. Therefore the landlord's application for an Order of Possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord testified that the rental unit consists of an apartment in a multi-unit complex. She stated that pursuant to a written agreement, the fixed term tenancy started on December 15th, 2008 until December 14th, 2009. The tenancy was renewed until December 14th, 2010 at which time the tenant moved out. The rent was \$1200.00 per month and the tenant paid a security deposit of \$600.00. A condition inspection

report was completed in the absence of the tenant before move-in and no report was completed at the end of the tenancy.

The landlord said that the new tenant informed her that the washer was broken and needed to be fixed. She said that she kept \$120.00 from the security deposit for carpet cleaning and returned the balance of \$480.00. The landlord said that the strata charges a fee of \$100.00 for use of the elevator upon move-out.

The tenant testified that she did not receive a copy of the tenancy agreement for the second term, and that no condition inspection reports were completed. She stated that she was not aware of a strata fee until the landlord notified her on January 31st, 2011. She said that she used the washer a day before moving out and that it was working fine. She also said that although she provided the landlord with her forwarding address on December 14th, 2010, the balance of her security deposit was not returned until January 15th, 2011.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

There was no documentary evidence before me from the landlord. In her application for dispute resolution, the landlord applied for the recovery of unpaid rent or utilities; she did not provide details or material evidence concerning a washer or a strata fee, nor did she submit an amended application to reflect a claim for the alleged damages. I find

insufficient evidence to prove that the tenant breached the Act of the tenancy agreement and accordingly the landlord's claim is dismissed.

Conclusion

The landlord's application is dismissed without leave to reapply. I decline to award the filing fee for this application.

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: August 09, 2011.

Residential Tenancy Branch