



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for cause; a Monetary Order for unpaid rent; to keep the security deposit; 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. The landlord testified that rent was \$525.00 per month and the tenant paid a security deposit of \$275.00. He stated that the tenant continues to live in the unit and that he has not paid rent for June, July and August 2011 for a claim totalling \$1575.00.

The tenant testified that the landlord only accepts cash for rent, and that he decided to move out on July 31st, 2011. The tenant said that he paid the landlord \$525.00 in cash

for June, \$212.50 for half of July, and that he told the landlord to keep the security deposit for the balance of that month's rent.

The landlord stated that the tenant was at the rental unit last night. The tenant replied that he moved out completely, and that he left the key to the rental unit with his forwarding address in an envelope on July 31st. The parties then proceeded to call each other liars.

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 such as a copy of the 10 Day Notice to End Tenancy, a tenancy agreement, or receipts before me from the landlord in support of his application, and the parties' testimony was contradictory in every particular. In the absence of material evidence, I find that the landlord did not prove, on a balance of probabilities, that the tenant broke the Act or the tenancy agreement.

I find it more than likely that the tenant did move out; he testified that he provided a forwarding address to the landlord, and he provided that address at the hearing. Therefore the landlord's application for an order of possession is dismissed.

Concerning the monetary claim for unpaid rent, I am not satisfied that the amount stated in the landlord's application is the correct amount. The tenant stated that the landlord could retain the security, and I hereby authorize the landlord to keep that amount.

Conclusion

The landlord's application is dismissed.

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 11, 2011.

Residential Tenancy Branch