



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. The application by the tenants is for money owed or compensation for damage or loss, to order the landlord to make emergency repairs and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began October 15, 2010 with monthly rent of \$1500.00 and the tenants paid a security deposit of 750.00.

On July 4, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenants have not filed to dispute this notice.

As the tenants have vacated the rental unit the landlord no longer requires an order of possession and this portion of the landlord's application is hereby dismissed.

As the tenants have vacated the rental unit the tenant's no longer require an order for the landlord to complete emergency repairs nor do the tenants require a rent reduction for repairs, therefore these portions of the tenant's application are hereby dismissed.

The landlord testified that the tenants owe the landlord a balance of \$2000.00 on the April and May rent, June rent of \$1500.00 and July rent of \$1500.00 for a total of \$5000.00 in unpaid rent. The landlord stated that the tenants also did not pay the August or September rent and the landlord will submit a new application to recover this unpaid rent.

The landlord stated that in April 2011 the tenants provided him with a signed agreement to pay the landlord \$3000.00 in unpaid rent along with any mortgage penalties and

interest. The tenant stated that they paid \$1000.00 which the landlord agreed to and that they then borrowed \$1990.00 and paid the landlord in cash after a cheque for \$2000.00 had bounced. The landlord agreed that the cheque had bounced but insisted that the tenants did not pay the \$1990.00 cash to him.

The tenant stated that they had made cash payments of \$3815.00 to the landlord during July, August and September for which they were never given receipts and the landlord claimed that the tenants had never paid this money. The tenant stated that she had no records regarding the June rent but commented that it must have been paid and acknowledged that the September rent was not paid because the landlord owed the tenants \$2600.00 for repairs that they had completed on the property.

The tenant testified that they had an agreement with the landlord whereby the tenants would complete repairs on the property in exchange for rent and the landlord directly refuted this claim stating that he had never told the tenants they could complete repairs in exchange for rent. The tenant stated that when they moved in the toilet was falling through the floor and the house was full of mould and in a state of great disrepair. The landlord referred to a bill for \$800.00 that the tenants had given him and for which they deducted \$800.00 off the rent and this was a repair for a broken hot water tank.

Both parties repeatedly accused the other of giving false testimony and continually contradicted one another's testimony.

The landlord in this application is seeking \$5000.00 compensation for unpaid rent.

The tenants in this application are seeking \$3365.00 compensation for damages and loss.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

While the landlord makes the claim that there is \$5000.00 in rent owing for the months of April, May, June and July, the landlord has not provided adequate evidence of this. The notice served on the tenants July 4, 2011 reflects an outstanding rent of \$2000.00 due which corresponds with the landlord's claim for the April and May rent. The tenant claims this amount was paid to the landlord in cash but has not submitted any bank records or receipts that show this amount being provided to the tenants. I therefore find that the landlord is entitled to \$2000.00 compensation for April and May unpaid rent.

The landlord has claimed that the rent for June and July has not been paid and stated that if the rent was not paid he could not provide a ledger showing this. The tenant maintained that cash payments totalling \$3851.00 were made July through September but had no records of the June rent having been paid. I therefore find that the landlord is entitled to \$1500.00 compensation for June 2011 unpaid rent.

I find that the landlord has established a claim for \$3500.00 in unpaid rent.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for compensation for damage or loss.

The tenants while claiming that they did work on the property in exchange for rent have not been able to provide a written agreement or other evidence regarding this arrangement and the landlord vehemently refuted the tenant's claim that such an arrangement ever existed. Therefore the tenant's application is dismissed without leave to reapply.

As the tenants have not been successful in their application the tenants are not entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$3500.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$2800.00**.

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: October 18, 2011.

Residential Tenancy Branch