



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was originally convened on September 16, 2011 but due to service issues the parties agreed to an adjournment until today's date.

At the outset of the hearing both parties confirmed they received some evidence from the other party. However, the landlord had submitted copies of rent receipts for other tenants to the Residential Tenancy Branch but not to the tenant. I advised the landlord I would not consider that material as it had not been served on the tenant.

At the original hearing the agent for the landlord clarified the respondent landlord should be named as the name of the building and not the agent who had been named previously. I amended the Application with the correct respondent name.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for over paid rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenancy began on March 15, 2010 as a month to month tenancy for a monthly rent of \$825.00 due on the 1st of each month.

The tenant testified that he paid rent in cash for the month of June 2011 on May 12, 2011 by placing it in the locked box onsite that the landlord used to collect rent. He further testified that on May 19, 2011 he attended a hearing where the landlord was granted an order of possession with an effective vacancy date of May 31, 2011.

The tenant testified the landlord failed to return the rent to the tenant. The landlord testified that despite being asked several months previously to pay rent by cheque or money order the tenant continued to pay in cash.

The landlord testified that she checks the locked box approximately 1 time per week as it is used, not only for rent collection but also for a location for tenants to submit requests for repairs and other issues. The landlord testified that she did not receive any rent from the tenant in the locked box for the month of June, 2011.

The tenant said he had a witness that would confirm for him that if he said he was going to put rent in the box it would have been there, however the witness was not in attendance in the hearing. The tenant also stated the landlord would have surveillance videotapes that would confirm he put the payment in the locked box. The tenant did not submit any copies of any surveillance recordings.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As the landlord has testified that she did not receive any rent from the tenant and in the absence of any witness or documentary evidence to confirm that the tenant placed rent in the locked box, I find the tenant has failed to establish that a damage or loss exists.

Conclusion

For the reason noted above, I dismiss the tenant's Application in its entirety.

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