



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Review Hearing Decision

Dispute Codes:

MND, MNR, MNSD, MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for \$5,400.00 for loss of rent for the month of January, February and March 2011 and \$100.00 reimbursement for the filing fee. The hearing was also convened to deal with an application by two persons named for the return of the \$900.00 security deposit in addition to damages totalling \$2,448.00 and the cost of filing the cross application.

A previous hearing was held on June 27, 2011 in which the landlord's application was heard in the absence of the tenant named as respondent, (JW), and the application made by the co-tenants, JW and LH was dismissed as it was determined the tenants had both failed to attend the hearing. After the initial hearing, JW, who was named as respondent/tenant in the landlord's application, then applied for and was granted a review hearing. Therefore, both the landlord's and the tenant's applications were scheduled to be re-heard.

At the reconvened hearing on October 11, 2011, the landlord did not appear . The individual, JW, identified as "tenant" in the landlord's application did appear.

However, this individual advised that, although the landlord had named him as a respondent and co-tenant, he was not a co-tenant and had never entered into a tenancy agreement with this landlord. He further stated that there was only one tenant, LH, but the landlord's application had not named LH as a respondent on the landlord's application. The tenant's application showed both JW and LH as applicants who were seeking monetary compensation. According to JW, the real tenant, LH, could not appear at the reconvened hearing as she was never served.

JW stated that he would represent the tenant, LH. JW testified that LH had never given the landlord, nor JW, her forwarding address.

Issues to be Decided for the Tenant's Application

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for rent loss in damages and the issue to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the Act for rent, loss of rent and damages.

Background and Evidence

Late evidence had been submitted by the tenant. However, this evidence was not accepted because the Residential Tenancy Act and the Hearing Rules of Procedure require that evidence be submitted and served on the other party 5 days prior to the hearing date, or if this is not possible, at least 3 days prior to the hearing. The date of the original hearing was June 27, 2011.

As the tenant, LH, did not appear, no further testimony nor evidence was presented by the tenant in support of her alleged claims.

The landlord did not appear at the reconvened hearing to present the landlord's evidence.

Analysis: Landlord's Application

As the landlord did not appear to present its claims at the reconvened hearing, I find that the landlord's application must be dismissed. Given the unchallenged testimony given by JW that he was not a tenant, I find that the landlord's application naming JW as respondent could not have proceeded in any case.

I find that the tenant, LH, was not named in the landlord's application nor was she ever properly served with the Notice of Hearing nor the Notice of Re-convened Hearing.

I also find that JW did not establish that he had any authority to represent the tenant in the tenant's portion of the application. Evidently LH's name was added to the application by JW without any involvement by LH in the process.

I further find that the application for monetary compensation and the return of the security deposit, purportedly submitted by both JW and LH was not an application that could proceed on the basis that one of the applicants, JW, was not a tenant, and the other alleged applicant, LH, apparently did not participate in the application.

For the reasons above, I find that the tenant's application must be dismissed. However, I give LH leave to reapply on her own, if she decides to do so.

Conclusion

Based on the testimony and evidence presented during these proceedings, I order that the landlord's application is dismissed in its entirety without leave to reapply.

Based on the undisputed testimony and evidence presented during these proceedings, I find that JW is not a tenant with any standing in this tenancy relationship.

The genuine tenant, LH, is at liberty to apply for dispute resolution on her own behalf if she wishes to pursue a monetary claim for the return of the security deposit.

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 11, 2011.

Residential Tenancy Branch