



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to retain the tenant's \$300.00 security deposit in compensation for the tenant's multiple violations of the Act and agreement during the tenancy, including prematurely terminating the agreement prior to the expiry of the fixed term.

Despite being served by registered mail sent on December 12, 2011, the respondent did not appear.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for losses and damage.

Background and Evidence

The tenancy began as a one-year fixed term on May 1, 2011 with rent of \$600.00 and a security deposit of \$300.00. The tenancy ended when the tenant vacated without notice sometime in October 2011. The landlord testified that in terminating the contract, the tenant violated the agreement. However, the landlord was able to re-rent the unit without incurring a loss. The landlord testified that during the tenancy the tenant had paid rent late and had engaged in disturbing conduct.

Analysis

In regards to an Applicant's right to claim damages from another party, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. With respect to meeting the 4 elements of the test for damages, I find that the landlord has only established that the tenant violated the Act and agreement, but was not able to prove that a tangible loss or expenditures of any kind were incurred.

Given that the test for damages has not been sufficiently met, I find that the landlord has not met the burden of proof to justify keeping any portion of the tenant's security deposit. I therefore find that the landlord's claim for damages must be dismissed and the security deposit must be refunded to the tenant forthwith.

Conclusion

I hereby grant a monetary order to the tenant pursuant to section 38 in the amount of \$300.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's application is dismissed without leave.

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: February 21, 2012.

Residential Tenancy Branch