



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; 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 a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium. Pursuant to a written agreement, fixed term tenancy started on February 1, 2011 and ended February 29, 2012, with a clause in an attached condition inspection report specifying a \$150.00 fee during move out.

The landlord testified that he paid the tenant's standard move-out strata fee of \$150.00 when the tenancy ended. He stated that the tenant was directed to deal directly with the strata and that he did not receive any monies from the tenant concerning the fees in

question. He stated that the tenant agreed to the terms of the lease, and that the lease identifies the tenant as owner concerning all aspects of residency at the rental unit. In his documentary evidence, the landlord provided in part the strata's invoice of \$150.00, and referred to the portion of the contract agreement specifying that the tenant is responsible to comply with the by-laws and rules of the strata corporation.

The tenant testified that at the start of the tenancy the landlord introduced him to the building manager acting for the strata corporation. The tenant stated that at the start of the tenancy he offered to write the building manager a cheque for the move-in and move out fees. He said that the building manager declined to accept a cheque and told the tenant that the strata accepted cash only. The tenant said that he reluctantly paid \$300.00 cash (\$150.00 for move-in and move-out respectively), and that the building manager refused to issue a receipt, stating that the very fact that he is allowed to move in is proof of payment. The tenant said that he contacted the landlord about having no receipt, and that the landlord replied that it was fine as long as he paid.

The tenant said that other occupants had noticed that the building manager's handling of cash was suspicious and experienced similar problems; he said that by the time he moved out there was a different building manager. The tenant said that the landlord declined to settle this dispute informally by paying half the invoice.

The tenant referred to his documentary evidence wherein he received an email from the strata corporation stating that the unit owner can request in writing that his strata account be waived, and that the unit owner is responsible to collect receipts and proof of payment for charges to his strata account.

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.

I disagree with the landlord's submission that acceptance of the terms of the tenancy agreement and the strata's Form K made the tenant owner of the unit, and that it discharged the owner's responsibility concerning strata rules. I find that the landlord ought to have exercised more diligence by inquiring with the building manager why a receipt was not issued, and to ensure this issue was resolved as it occurred. The landlord wrote on the condition inspection report that a move-out fee of \$150.00 was required, and I find that the landlord was thus responsible to provide a receipt to ensure payment was made. The tenant should not be embroiled with the strata corporation's management problems with its building manager. The landlord has not proven, on a balance of probabilities, that the tenant did not pay the move-out fee.

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: May 07, 2012.

Residential Tenancy Branch