



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent, liquidated damages and the cost of filing the application. The landlord was seeking to retain the security deposit in partial compensation for the claim.

Despite being personally served with the hearing documents, on May 11, 2012, the tenant did not appear.

Issue To Be Determined

The issue to be determined is whether the landlord is entitled to monetary compensation under the Act or tenancy agreement.

Background and Evidence

The landlord testified that the tenancy began in November 2011 for a fixed term and that the tenant terminated the tenancy prior to the expiry date of the agreement and vacated on April 17, 2012. The claim is for \$875.00 rental arrears owed, \$800 loss of rent for May 2012, \$400.00 liquidated damages and the \$50.00 cost of the application.

The landlord had not submitted any evidence and was not able to confirm what evidence, if any, was served on the tenant.

Analysis

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 steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual cost of the loss or damage.

Residential Tenancy Rules of Procedure, Rule 3.1, states that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding.

In this instance, I find that the landlord's application was made on-line on May 10, 2012 and the hearing was scheduled for July 10, 2012. I find that, during this period, the landlord failed to submit relevant documents, such as a copy of the tenancy agreement or a copy of the tenant's ledger, to support the monetary claim, or even verify the existence of a tenancy agreement with the respondent.

Given the above, I find that the landlord has not satisfied all elements of the test for damages. I find that the landlord's monetary claim has no merit due to insufficient evidentiary proof and must therefore be dismissed.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety without leave to reapply.

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: July 10, 2012.

Residential Tenancy Branch