



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter: The only evidence submitted was by the respondent/tenant, who stated that she did not send the evidence to the landlord as she did not live at the address listed on her application. The tenant explained that this address was in the upper suite and that she moved out on June 30, 2012. The landlord offered no disagreement. As the tenant failed to send the evidence to the landlord as required by the Residential Tenancy Branch Rules of Procedure, even if that address was not current, I have not considered the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

The landlord said that although she moved out of the upper suite, the rental unit being in the basement suite, on June 30, 2012, the tenant did not pay rent for three months.

The landlord's monetary claim is in the amount of \$1680.00.

The landlord explained that she rented the entire home and rented the lower suite to the tenant.

In response, the tenant said that the owner of the building requested that rent be paid to him as the landlord had vacated the home.

The tenant said that she was evicted without notice on August 14, 2012.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The landlord has not submitted documentary evidence in support of her application. The only evidence before me is the disputed oral testimony of the landlord and the tenant.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

I therefore find that the landlord has submitted insufficient evidence to establish a monetary claim against the tenant and I dismiss the landlord's application without leave to re-apply.

Conclusion

The landlord's application is dismissed, 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* and is being mailed to both the applicant and the respondent.

Dated: November 05, 2012.

Residential Tenancy Branch