



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This was an application by the tenant for a monetary order for loss and to recover the filing fee for this application. The application was orally amended by the tenant in the hearing to recover certain fees and storage costs in the sum amount of \$384.00.

Both parties participated in the hearing with their submissions, document evidence and relevant sworn testimony during the hearing. The parties were also provided opportunity to discuss and resolve their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to a monetary order in the amount claimed for loss?

Background and Evidence

The undisputed relevant testimony in this matter is that on September 09, 2012 both parties came together and entered into a verbal tenancy agreement in which the tenant and landlord agreed the tenancy of the subject house would start October 01, 2012, the payable rent would be \$1350.00 per month, and the landlord collected a security deposit in the amount of \$675.00. Both parties acted on that agreement: the landlord removed the rental unit's availability to others and advanced on certain efforts toward the occupancy date of October 01, 2012 – the tenant made a purchase of certain furniture. In the following 10 days both parties communicated and together made plans with a view to fulfilling their verbal agreement and realize the tenancy. The tenant claims the landlord vacillated in the areas of the facilities of the rental property; the amount of payable rent each month, and those conditions which were desirable or required by the landlord during the tenancy. The landlord claims that certain terms were

to be embedded within the eventual written tenancy agreement which the tenant did not agree to; but, that the amount of rent was never an issue. Regardless, on September 20, 2012 the parties came together and mutually determined to end their plans to form a tenancy. The tenant requested return of their security deposit and the landlord complied. The tenant placed their new furniture into storage, and has since entered into a new tenancy and removed their furniture from storage.

Analysis

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss.

On preponderance of all the evidence in this matter, and on balance of probabilities, I find that the parties mutually entered into a tenancy agreement on September 09, 2012, for occupancy of the rental unit October 01, 2012. I further find that prior to the start and occupation of the tenancy the parties – each for their own reasons - determined they had some reservations about the tenancy, and mutually agreed to end the tenancy. I find that the tenant's claim for loss does not meet the above test established by Section 7 of the Act. I find the parties mutually agreed to dissolve the tenancy

agreement they established on September 09, 2012. As a result, **I dismiss** the tenant's claim, without leave to reapply.

Conclusion

The tenant's claim **is dismissed**, without leave to reapply.

This Decision is final and binding on both parties.

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: December 18, 2012

Residential Tenancy Branch