



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied 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.

The landlords and an agent for the tenant (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The Agent confirmed that she received the evidence package from landlords and had the opportunity to review the evidence prior to the hearing. The landlords stated that they had not been served with photo evidence. As a result, I advised the parties that if the photo evidence was deemed to be relevant, the hearing would be adjourned to allow time for the photo evidence to be served in accordance with the rules of procedure.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act*?

Background and Evidence

A month to month tenancy began on November 1, 2010. Monthly rent in the amount of \$750.00 was due on the first day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy.

The tenant and the landlords signed a mutual agreement to end the tenancy after a flooding issue. In the mutual agreement the parties agree that the tenant would vacate the rental unit by September 1, 2012. The tenant actually vacated about one week later on September 8, 2012.

The tenant is seeking compensation in the amount of \$750.00 for August 2012 rent. The landlord's testified that the tenant did not pay August 2012 rent or any rent for September 2012 either and as a result, the tenant did not suffer a loss and has already received the compensation he is requesting.

The Agent stated that the tenant lived with her for the month of August 2012. The landlords dispute that portion of the Agent's testimony. The landlords stated that the tenant was living in the rental unit until he vacated on September 8, 2012. The Agent, who is also the sister of the tenant, stated that the tenant did not pay her for rent for the month of August 2012 when he allegedly lived with her.

Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the testimony provided during the hearing, **I find** that the tenant has not suffered a loss as the tenant did not pay rent for the month of August 2012 and that the landlords had already considered that as a month of compensation as part of their mutual agreement to end the tenancy. Furthermore, the tenant did not suffer a loss by paying rent to his sister when he allegedly lived with her during August 2012. The landlords dispute that the tenant was living away from the rental unit in August 2012.

I find that photo evidence would not have been relevant to my decision, as the tenant has not proven that a loss has occurred. Therefore, based on the tenant not suffering a loss, **I dismiss** the tenant's application in full as the tenant has failed to meet the burden of proof in proving they suffered any loss.

The tenant signed a mutual agreement with the landlord to end the tenancy. The tenancy ended on the day the tenant vacated the rental unit, September 8, 2012 which is one week after the date the tenant agreed in writing to vacate the rental unit.

As the tenant's application did not have merit, I **do not** grant the tenant the recovery of the filing fee.

Conclusion

I dismiss the tenant's application due to insufficient evidence of a loss, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 29, 2013