

DECISION

Dispute Codes

For the tenant: MNSD FF SS O

For the landlord: MND FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for the return of her security deposit, for recovery of her filing fee, for “other” although details of “other” were not provided in her application, and to serve documents in a different way than required in the *Act*.

The landlord applied for a monetary order for damage to the unit, site or property, to recover the filing fee, and “other” although details of “other” were not provided in the application.

The tenant and an agent for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Preliminary and Procedural Matters

The tenant testified that she was not aware that the landlord had made an application for dispute resolution. The tenant denied being served by the landlord with Notice of a Dispute Resolution Hearing. The agent for the landlord was unable to provide details on how the tenant was served and if the tenant was served. As result, I am not satisfied that the tenant has been served with the landlord’s application. Therefore, **I dismiss** the landlord’s application with leave to reapply due to service not being proven on the tenant.

The tenant provided her new service address during the hearing which was recorded by the agent for the landlord. The address for tenant was updated as result.

Issue to be Decided

- Was a security deposit paid and if so, what should happen to the security deposit under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on January 1, 2012. Monthly rent in the amount of \$650.00 was due on the first day of each month. The tenant alleges that she paid a security deposit of \$325.00 at the start of the tenancy. The agent for the landlord disputed the tenant's testimony. The agent stated that the tenant failed to pay a security deposit as required.

The tenant confirmed that she did not provide any documentary evidence in support of her claim and that the witness she was relying on was not available for the hearing.

Analysis

Based on the documentary evidence and the landlord's oral testimony provided during the hearing, 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.

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.

In this instance, the burden of proof is on the tenant in proving that a security deposit was paid in order for a claim to return the security deposit to be considered. The tenant

failed to submit any supporting evidence that a security deposit was paid at the start of the tenancy such as a receipt, and did not have any witnesses to corroborate her oral testimony. As the agent disputed the tenant's testimony, the tenant's claim fails without further evidence in support of her claim. Therefore, **I dismiss** the tenant's claim in full due to insufficient evidence, without leave to reapply.

Conclusion

The tenant's claim is dismissed in full due to insufficient evidence, without leave to reapply.

The landlord's claim is dismissed with leave to reapply due to service on the tenant not being proven during this hearing.

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 25, 2013