



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILDWOODS CAMPSITE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPE, OPR, MNR, MND, MNDC, FF

Introduction

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

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

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 approximately 3 years ago and that the tenant vacated in January 2013. No rent was charged and no security deposit had been paid. The landlord testified that the tenant was required to contribute labour in exchange for residing in the rental unit. The landlord is claiming \$3,996.00 for the loss of furnishings and \$2,225.00 for damage caused to the premises, for a total claim of \$6,221.00.

Submitted into evidence by the landlord was a hand-written list of items allegedly taken by the tenant, along with the value of each and a second list of alleged damages to the premises purportedly caused by the tenant with the cost of the repairs.

No copy of the tenancy agreement , move-in and move out condition inspection reports, receipts or any other evidence had been submitted or served on the respondent to support the landlord's monetary claims.

The tenant disputed the landlord's claims and pointed out that, at the start of the tenancy, all of the landlord's furnishings were moved into a storage area designated by the landlord and were never used by the tenant at all.

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 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, although the landlord had submitted a list of his claims, the landlord failed to submit relevant supporting documents, such as a copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, receipts or invoices or any other relevant documentary evidence. I find that the tenant disputed the

evidence and challenged the claim and the landlord was not able to overcome that challenge by meeting the burden of proof.

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.

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

Conclusion

The landlord is not successful in the application and the monetary claim is dismissed without leave.

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: October 09, 2013

Residential Tenancy Branch

