



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, MNR

This hearing dealt with cross applications. The landlord filed an application seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant filed an application seeking the return of his security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

Both parties agree to the following:

The tenancy was to begin on August 1, 2013 for a fixed term of one year. The tenants were obligated to pay \$3050.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1525.00 security deposit.

The landlord gave the following testimony:

The landlord stated that on July 22, 2013 the tenant advised that he no longer wished to move in and wanted his deposit back. The landlord stated that the tenant had engaged in a conversation with the landlords' father and that due to a misunderstanding the tenant became upset. The landlord stated that she was unable to re-rent the unit for August 1, 2009. The landlord stated that she asked the tenant for his forwarding address on numerous occasions but the tenant refused to provide it. The landlord stated the first time she was given his address was when she received the notice of hearing documents. The landlord is seeking \$4575.00.

The tenant gave the following testimony:

The tenant stated that the landlord misrepresented the property. The tenant stated that the landlord had agreed to a price for the monthly rent and that the landlords' father wanted more money. The tenant stated that the landlord breached the contract and he was no longer obligated to move in.

Conclusion

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations that neither could substantiate. The parties were more intent on arguing with each other than answering questions or presenting their claim. Neither party provided any documentary evidence.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. This was explained to both parties in great detail several times during the hearing. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In addition, with no documentary evidence to support their claim, I'm left with just their oral testimony.

The tenant stated that he had "lots of proof at home but was too busy to submit it but can e-mail it later today". The tenant initiated this action between the two parties on August 13, 2013. I found the tenants evidence to be contradictory and lacking credibility at times. The tenant acknowledged that he had signed a one year "lease" and that he had decided on July 22, 2013 not to move in. The tenant is of the position notice was not required based on the landlords breach of contract. The tenant did not satisfy me that the landlord breached the contract.

Based on the tenants own admission of that fact I find that the landlord is entitled to some compensation, however I do not agree with the amount sought by the landlord. The landlord bears a responsibility to mitigate their losses and provide evidence of such, the landlord did not. Based on the date the landlord was informed that the tenant would not be moving in it is reasonable to expect that the landlord could have rented the unit for August 15th, accordingly I award the landlord \$1525.00 for loss of revenue for the first two weeks of August 2013.

As neither party has been completely successful in their application I decline to award either party the recovery of the filing fee and each must bear that cost.

The landlord has established a claim for \$1525.00. I order that the landlord retain the security deposit in full satisfaction of the claim.

Conclusion

The landlord is entitled to retain the \$1525.00 security deposit.

The tenants' application is dismissed in its entirety 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*.

Dated: November 25, 2013

Residential Tenancy Branch

