



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed and to retain the security deposit in partial compensation for the claim.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent, the respondent did not appear. An advocate appeared briefly to inform that, although she had been contacted by the tenant in regard to the hearing, the tenant had not formally authorized her to represent the tenant. Accordingly, I find the tenant has been served, but did not attend and the hearing is therefore being conducted in the respondent tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to compensation under section 67 of the *Act* for unpaid rent?.

Background and Evidence

The landlord did not submit any documentary evidence. There was no copy of the tenancy agreement, receipts, a tenant ledger, nor copies of communications to or from the tenant.

The landlord testified that the tenant moved out on a date unknown. The landlord pointed out that, when they entered the unit after providing proper Notice under the Act, the tenant's furniture was found to be still in the unit.

The landlord testified that the tenant sent a letter to them dated March 27, 2014, with her forwarding address, requesting the return of the security deposit.

The landlord was not able to provide information about the tenancy including when the tenancy began, when the tenancy ended nor how much security deposit was paid.

Analysis

It is important to note that in a claim for monetary compensation, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must support the monetary claim.

Section 59 (2) of the Act states that an application for dispute resolution must be in the applicable approved form and include full particulars of the dispute that is the subject of the dispute resolution proceedings. Section 62(4) provides that all or part of an application for dispute resolution may be dismissed if the application fails to disclose a dispute that may be determined under this Part.

I find that any application seeking to claim rent owed would need to be supported with proof of a tenancy or other documentary material submitted into evidence.

In this instance, although the landlord provided verbal testimony, I find that the landlord would have had at its disposal rental records for this tenant at the very least including copies of receipts issued to the tenant for rent paid in cash, presuming that the landlord had complied with the Act. Although these records were crucial in determining what rent was paid and for what periods, the landlord failed to provide them to support the landlord's claims.

For this reason, in the case before me I find that the landlord has not provided sufficient evidence to support the monetary claim and it must therefore be dismissed.

Based on the testimony and evidence presented during these proceedings, I also find that the landlord is not entitled to retain the tenant's security deposit and the tenant is entitled to have these funds returned pursuant to section 38 of the Act.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim 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: August 11, 2014

Residential Tenancy Branch

