Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes   OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent and to recover the filing fee from the tenant.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the parties agreed that the tenant vacated the premises and an order of possession is not required.

Issues to be Decided

Is the landlord entitled to an order monetary order for unpaid rent?
Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

The landlord claims as follows:

a.	June rent	$ 695.00
b.	Unpaid utilities	$ 291.32
c.	Filing fee	$ 50.00
	Total claimed	**$1,036.32**

The landlord's agent testified that the tenancy began on August 1, 2013. The agent stated that the tenant's rent was $1,195.00 and he was given $500.00 credit towards rent as he was the resident manager of the building. The tenant did not pay a security deposit.

The landlord's agent testified that they discovered that the tenant had vacated the rental unit on June 19, 2014, without providing notice to end the tenancy and without pay rent for June 2014. The landlord seeks to recover unpaid rent for June 2014, in the amount of $695.00.

The landlord's agent testified that the tenant also failed to pay his hydro account. The agent stated they have not filed any invoices to support the amount of utilities claimed.

The tenant responded that he never signed a tenancy agreement with the landlord. The tenant stated he was not a tenant; rather he was an employee that entered into an eight page work contracted with the property management company. The tenant stated that when his employer notified him at the beginning of May 2014, that his services were no longer required, they agreed at that time that he should vacate the premises. The tenant stated he left the premises at the end of May 2014.

The tenant testified that the hydro has always been paid by the property management company since the start of his employment to accommodate the business office that he was required to have in his unit. The tenant stated that it was only recently when there was a change within the organization that they now wanted him to pay for the hydro.

The landlord's agent responded that he has no direct knowledge if there was a work agreement or tenancy agreement signed as there was not a copy of either agreement in the file that was provided to him. The landlord's agent stated he was not involved when the tenant's employment ended.

<u>Analysis</u>

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

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 case, both parties have provided a different version as to whether this is a tenancy agreement or a work agreement. The evidence of the landlord's agent was that he has not seen any written agreement, and any agreement that was made was prior to his involvement. The evidence of the landlord's agent was that he was not involved when the tenant was given notice to end his employment. The evidence of the tenant was that he signed a work agreement on August 7, 2013 and when his employment was terminated at the beginning of May 2014, it was agreed that he would leave the premises.

As the onus is on the landlord to prove their claim, I find in the absence any further evidence, such as the agreement that was signed by the parties on August 7, 2013, I

am unable to determine whether a tenancy exist between a landlord or tenant. As it is just a likely this agreement is a work agreement between an employer and employee. Therefore, I dismiss the landlord's claim without leave to reapply due to insufficient evidence

Conclusion

The landlord's application is dismissed without leave to reapply due to insufficient evidence.

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 13, 2014

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Residential Tenancy Branch