



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

There are two applications filed. The landlord seeks a monetary order for damage to the rental unit, to keep all or part of the security deposit and recovery of the filing fee. The tenant seeks a monetary order for the return of double the security deposit and recovery of the filing fee.

The landlord attended the hearing with her interpreter and gave undisputed testimony. The tenant, J.D., N.A. and M.S.A. attended the hearing by conference call. The landlord states that the named tenant, N.A. and J.D. in the tenant's application are not his tenants. The landlord states that his tenant was M.S.A. and not N.A. and J.D. as named in the landlord's application. J.D. has confirmed that she was not a tenant, but that her husband sometimes lived there, but it was her father-in-law, M.S.A. who did. The landlord dispute this. It has been clarified that the tenant's application was improperly filed and specified the wrong persons named as tenants. As such, the tenant's application is dismissed. The tenant has stated that they never received the landlord's notice of hearing package. The landlord has submitted a copy of a returned Canada Post Registered Mail package envelope for the notice of hearing and submitted documentary evidence that was sent on October 21, 2014 and returned November 4, 2014. The envelope states that "no such person @ this address". The landlord states that a second package was again sent to the tenant's address by Canada Post Registered Mail on November 4, 2014 and has submitted a copy of that Customer Receipt Tracking number. The tenant reiterates that no such package was received, but has confirmed that the mailing address served is correct. I accept the landlord's evidence and find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence as per the landlord's Customer Receipt Tracking number from Canada Post. The tenant is deemed as per the Act to have been properly served 5 days later.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

Neither party has provided a copy of a signed tenancy agreement, but state that one existed verbally. The landlord states that rent was \$650.00 and that a security deposit of \$325.00 was paid. The tenant states that rent was \$800.00 and that a \$400.00 security deposit was paid. Neither party was able to provide any supporting evidence.

The landlord states that the tenant left the rental unit dirty and damaged requiring \$450.00 as compensation to repair/replace items. This consists of \$136.50 for carpet shampoo and cleaning, \$78.75 for the repair of blinds, \$100.00 for general cleaning, an estimated \$50.00 for a fruitbox and \$80.00 for time off work for filing the application and to attend the hearing.

The tenant, M.S.A. disputes the landlord's claims, stating that the rental unit was left clean and that he was told by the landlord that all was fine and that he would receive the complete security deposit within a few weeks.

Analysis

I accept the evidence of both parties and find that the landlord has failed in their application. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. In this case, it belongs to the landlord. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Both parties have provided conflicting evidence as to what the tenancy was and what the security deposit amounts were. Neither party has provided any supporting evidence. The landlord has failed to complete a condition inspection report for the

move-in or the move-out to show the state of the rental unit, nor has either party provided any evidence of the amount of rent or the security deposit. I find that there is insufficient evidence to support the landlord's claim and as such it is dismissed.

Conclusion

The tenant's application is dismissed.

The landlord's application is dismissed.

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 14, 2014

Residential Tenancy Branch

