



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent and damage pursuant to section 67; authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:54 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that he served his Application for Dispute Resolution package by registered mail on December 1, 2014. He provided a receipt and Canada Post tracking number for this mailing. Based on the landlord's sworn and undisputed testimony and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's Application for Dispute Resolution package on December 6, 2014, 5 days after its registered mailing.

Preliminary Issue: Previous Dispute Resolution Hearing

The landlord testified that he made a previous application with respect to this tenancy. A hearing was commenced on October 23, 2014. At that time, neither party attending the scheduled hearing. In the decision dated October 24, 2014, the arbitrator dismissed the landlord's application with leave to re-apply. Based on that original decision, the applicant/landlord was entitled to file a new application.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage or loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began in approximately 2009 and ended sometime during the summer of 2013. The landlord testified that there was no written tenancy agreement created by the parties of this tenancy. The landlord testified that the rental amount was reduced during the course of the tenancy at the request of the tenant. He testified that the rent was \$800.00 payable on or about the first of each month.

The landlord testified that, over the course of her tenancy, the tenant incurred \$12,000.00 of rental arrears. He testified that, for the year of 2010, he estimates that the tenant owes \$3400.00. He testified that, for the year of 2011, he estimates that the tenant owes \$2700.00. He testified that, for the year of 2013, he estimates the tenant owes \$5900.00. He testified that the tenant agreed to pay \$200.00 per month for rental arrears but did not. He did not provide a timeline with respect to the extra payment arrangement.

The landlord submitted photographs that he testified illustrate damage to the rental unit after the tenant vacated the unit. He testified that all required repairs were done by him. The landlord testified that he was acting out of kindness for a friend of the family by allowing the tenant to stay in his rental unit. He also testified that he continued the tenancy for many years as the tenant always promised to begin paying the arrears.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord claims that he suffered a loss as a result of this tenancy in that it was necessary to repair the rental unit. The substance of his claim, however, is with respect to outstanding, unpaid rent totalling \$12000.00.

The landlord must show that he suffered a loss. The landlord has not provided any receipts with respect to repairs to the rental unit. His photographs are undated and

reflect a very dirty rental unit that would have required cleaning before the landlord could re-rent the unit. The landlord was unable to produce a tenancy agreement to show that the tenant agreed to pay a monthly rental amount. He did not produce bank statements to reflect a regular payment schedule by the tenant to the landlord. The absence of a written tenancy agreement creates difficulty in establishing that any loss incurred by the landlord was in fact as a result of a contravention of any agreement between the parties or of the *Residential Tenancy Act*.

The landlord also must provide evidence to verify the monetary amount he has claimed. At the hearing, the landlord provided only estimates of what the tenant allegedly failed to pay dating back as far as 2010. He provided very few details to substantiate any portion of this claim for unpaid rent. Although the landlord referred to a repayment schedule arranged with the tenant, he provided little information regarding these monthly payments. In the absence of a tenancy agreement, bank statements, a written payment agreement or some evidence to support the landlord's testimony, I find there is insufficient proof to support the landlord's application for a monetary order.

As well as a monetary order for unpaid rent and damage or loss, the landlord also sought to recover his \$50.00 filing fee with respect to his application. As the landlord has been unsuccessful in his claim, I do not find that he is entitled to recover this filing fee.

Conclusion

I dismiss the landlord's application in its entirety.

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: April 17, 2015

Residential Tenancy Branch

