



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND,FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for a monetary order for unpaid rent and alleged damage to the rental unit and for recovery of the filing fee paid for this application.

The landlord and tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had not submitted any documentary evidence for this hearing.

Thereafter the parties were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant?

Background and Evidence

In supporting his application, the landlord confirmed that there was no written tenancy agreement and that the tenant did not pay a security deposit. The landlord submitted further that this tenancy began on June 15, 2014, ended on November 8, 2014, and that monthly rent was \$1800.00.

The tenant submitted that he was not sure when the tenancy began or ended and that he had an agreement with the landlord that monthly rent would be in lieu of his work around the rental unit.

The landlord's monetary claim listed in his application was \$7500.00; however, when providing a breakdown of the claim in his application, the landlord submitted that the tenant owed rental arrears for August, September and October and hydro costs of \$676.43, for a total of \$6076.43.

The landlord submitted further that the tenant was to work around the rental unit for a reduced rent, the \$1800.00, not to withhold rent.

The landlord submitted further that the tenancy was to be for 3 months, but that the tenant sent an email that he was not vacating the rental unit at the end of August. According to the landlord, the tenant stayed the rest of the tenancy without working or without paying rent. The landlord submitted further that the tenant failed to put the hydro account in his name as agreed upon and that he had to pay the hydro costs of the tenant.

In response, the tenant submitted the parties had an agreement that the landlord would pay the tenant \$2500.00 to end the tenancy and failed to pay him, despite the work he had performed around the home.

The tenant submitted further that the landlord's request for compensation was a joke, as there were no cabinets, floors, or trim, all work needing to be finished. The tenant submitted further that he did not believe he owed the landlord anything.

The tenant submitted further that he could not put the hydro account into his name, as the home previously had a marijuana grow operation, and therefore the hydro company required a \$10,000.00 deposit.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss, as required in section 7(2) of the Act.

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 the case before me, the parties provided disputed testimony as to when this tenancy began, when it ended, the monthly rent contribution by the tenant, or whether there was work to be performed in lieu of monthly rent, as there was no written tenancy agreement pertaining to this tenancy as required of landlords under section 13(1) of the Act. The purpose of a written tenancy agreement is to communicate to the parties the terms and

conditions of the tenancy, which are then enforceable. If the tenancy agreement is not in written form, the terms, including utilities, are left open to interpretation.

I find that, in any dispute when the evidence consists of conflicting and disputed testimony, in the absence of independent documentary evidence such as is the case here, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of “facts” is more believable as I find disputed testimony does not sufficiently meet the burden of proof. I also note that in this case, at any rate, I did not find one party more credible than the other.

I therefore find that the landlord has failed to submit sufficient evidence to meet his burden of proof that that he is entitled to monetary compensation from the tenant and I dismiss the landlord’s application, without leave to reapply.

Conclusion

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: April 20, 2015

Residential Tenancy Branch

