



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for Order of Possession based on unpaid Rent, a Monetary Order for unpaid rent, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Landlord's administrative assistant, D.O. appeared on his behalf and confirmed that she was prepared to act as agent for the Landlord. Both Tenants also appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed 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 to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing the parties advised that the Tenants had moved out of the rental unit such that an Order of Possession was not required.

Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began September 24, 2012. The monthly rent was \$1,000.00 per month, payable on the first of the month. The Tenants did not pay a security deposit. D.O. testified that for the first month the Tenants were only expected to pay \$700.00 as they were credited \$300.00 for the cleaning they did on the rental unit.

The Landlord introduced in evidence a "Tenant Leger" indicating the sum of \$4,115.00 was owed as of October 2014. The leger further indicated the Tenants had been credited \$1,200.00 for "gravel".

The Landlord also introduced evidence which appears to have been filed in support of a claim for damages to the rental unit. As such relief was not claimed on the Landlord's Application for Dispute Resolution, the Landlord was cautioned that a further application would be required.

The Tenants testified that the Landlord and the Tenant, L.R.'s, employer J. were business partners. L.R. stated that the Landlord and J. had an arrangement whereby all overtime hours worked by L.R. were to be credited to his rent. L.R. was employed as a heavy equipment operator and was paid \$30.00 per hour. L.R. further testified that he provided his time sheets to J. who in turn calculated the amounts to be credited to L.R.'s rental payments. L.R. testified that he worked overtime during the months June, July, August and September and he estimates that he worked approximately 3-4 hours overtime each week night, in addition to full eight hour days on both Saturday and Sunday. Both J.R. and B.R. confirmed that it was their understanding that J.R.'s overtime more than covered all outstanding rent.

L.R. stated that the first time the Landlord told him that he owed rent was in September. He stated that he knew that he had more than worked enough hours, but was not surprised the Landlord's records were inaccurate as from his perspective his employer and the Landlord had poor record keeping for their business.

L.R. testified that he then quit working for J. as he felt that J. and the Landlord were taking advantage of him and that the was, according to their inaccurate records, "working for nothing".

In response to L.R.'s submissions that he had worked overtime and that the amounts he was supposed to be paid were to be credited to his rent payments, D.O. stated that she was aware of the arrangement but not "fully aware" of the details. She directed my attention to two invoices, #648113 and #584885 which D.O. confirmed were related to

this arrangement. She stated that it was an arrangement between the Landlord and L.R.'s boss, and that she really didn't know all the details.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;
2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords took reasonable steps to minimize the damage or losses that were incurred.

In this case, the Landlord submitted that the Tenants failed to pay rent contrary to the tenancy agreement and that the sum of \$4,115.00 was outstanding for rent payments.

The Tenants submitted that a private arrangement existed between the Landlord and his business partner, J. who also happened to be the Tenant, L.R.'s employer. D.O. confirmed this arrangement existed but was not able to provide specifics as to the arrangement.

Both Tenants testified that they believed L.R. had worked sufficient overtime hours to cover all outstanding rent. D.O. did not dispute this claim, only to advise that she credited the account when she was told to.

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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find the Landlord has provided insufficient evidence as to what amounts were credited to the Tenants and accordingly has failed to prove the value of the outstanding rent.

Both parties confirmed an arrangement existed whereby the tenant L.R.'s over time was credited to his rental payments. I accept L.R.'s evidence that he provided his time sheets to his employer who in turn provided that information to the Landlord. Those time sheets were not in evidence. This is an unusual arrangement to be made for payment of rent, and it is the responsibility of the Landlord to keep clear and careful records.

Accordingly, I dismiss the Landlord's claim for a Monetary Order for Unpaid Rent pursuant to section 67. As the Landlord was unsuccessful, I similarly dismiss his claim to recover the filing fee.

Conclusion

The Landlord failed to prove the outstanding rent and as such his request for a Monetary Order and recovery of the filing fee is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 29, 2015

Residential Tenancy Branch

