



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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, which lasted approximately 33 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package ("Application") on December 18, 2015. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlords' Application on December 18, 2015.

At the outset of the hearing, the landlord agreed that a different Arbitrator at a previous Residential Tenancy Branch ("RTB") hearing ordered the return of double the value of the tenant's security deposit to the tenant. The landlord noted that there were two previous RTB hearings regarding these parties and this tenancy. The file numbers for the previous hearings appear on the front page of this decision. I notified the landlord that the security deposit issue was *res judicata*, meaning it had already been decided and that I could not deal with that claim at this hearing.

Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy was supposed to begin on September 1, 2014 but the tenant never moved into the rental unit. It was based on a verbal agreement, as no written agreement exists. Monthly rent in the amount of \$3,500.00 was payable on the first day of each month.

The landlord seeks a monetary order of \$4,850.00 plus the \$50.00 filing fee.

The landlord seeks \$3,500.00 for a loss of September 2014 rent, stating that the tenant did not show up to rent the unit, that she did not pay rent for September 2014 and the landlord was unable to re-rent the unit until December 2014 or January 2015. The landlord said that he did not refuse to give the tenant keys to access the rental unit. He said that the tenant moved her belongings into the rental unit on August 7 or 15, 2014 and that on September 7, 2014 the tenant attended with the police to retrieve her belongings from the rental unit. The landlord said that he advertised the rental unit online on September 8 and 19, 2014 and that he had about 7 to 8 showings of the unit.

The landlord also seeks \$1,350.00. He claimed that he served a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") to a different tenant in another property and had to give that tenant one month's free rent of \$1,350.00 as per section 51 of the *Act*. The landlord said that he had to serve the 2 Month Notice in order to move into that other unit, since he was living at the rental unit that the tenant was supposed to occupy.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I note that the landlord's witness statement was not verified at this hearing by the witness. The landlord agreed at the hearing that most of the statement was based on what he told the witness, rather than firsthand observations by the witness. The landlord said that he told the witness that the rental unit was re-rented to a new tenant on December 1, 2014 (although the landlord could not confirm this date at the hearing) and that he gave one month's free rent to another tenant.

I find that the landlord chose to serve a 2 Month Notice to another tenant. The landlord is required to provide one month's free rent compensation to that tenant pursuant to section 51 of the *Act*. The tenant named in this application is not responsible to pay this compensation as it was done on the landlord's own initiative. The landlord did not provide a copy of the 2 Month Notice or a copy of the tenancy agreement with the other tenant. The landlord did not provide any dates as to when he served the 2 Month Notice, when the other tenant had to vacate the unit or when the landlord moved into that unit. I find that the landlord did not provide sufficient documentary evidence to substantiate the above claim and failed to satisfy the four-part test. Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the landlord's claim for \$1,350.00 without leave to reapply.

The landlord failed to provide a copy of his rental advertisements for re-renting the rental unit. The landlord failed to provide the exact date when a new tenant began occupying the rental unit. I find that the landlord did not provide sufficient documentary evidence to substantiate this claim and failed to satisfy the four-part test. Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the landlord's claim for \$3,500.00 for a loss of September 2015 rent, without leave to reapply.

As the landlord was wholly unsuccessful in this Application, I find that he is not entitled to recover the \$50.00 filing fee paid for his Application.

Conclusion

The landlord's application to retain the tenant's security deposit is *res judicata*.

The remainder of the landlord's application is dismissed without leave to reapply.

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: July 25, 2016

Residential Tenancy Branch