



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlords applied for a monetary order to retain the tenant's security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

The landlord RW ("landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and 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.

As the respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent submitted a registered mail customer receipt which supports that the respondent was mailed a registered mail package on September 5, 2017 and that the respondent received the package on September 9, 2017. The registered mail tracking number has been included on the cover page of this decision for ease of reference. Based on the evidence before me I find the respondent was sufficiently served.

Preliminary and Procedural Matter

The landlord provided their email address at the outset of the hearing and their understanding was confirmed that they understood that the decision would be emailed to the landlords and sent by regular mail to the respondent.

Issue to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord testified that the respondent was supposed to sign a lease/tenancy agreement but failed to do so. In addition, the landlord testified that the cheque that she claims was provided by the respondent was cancelled and that the landlords were not provided with a security deposit as a result. The cheque submitted in evidence does not include the name of the respondent and instead has the name of a numbered company.

The landlords failed to submit in evidence a company search to prove a link between the numbered company and the name of the respondent. While the landlord claims she had texts in front of her during the hearing which would support that they communicated regarding forming a tenancy with the respondent, she confirmed that copies of those texts were not submitted in evidence for consideration. The landlord claims that she was not aware that copies of texts could be submitted in evidence.

The landlord is seeking \$575.00 plus the recovery of the \$100.00 filing fee. The landlords write in their application that they are seeking \$575.00 which is half of the original security deposit which they claim was not paid by the respondent due to the cheque that was cancelled by the respondent.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

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 what 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 landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

Firstly, I find the landlords have failed to provide sufficient evidence that the respondent is a tenant under the *Act* as the name AK does not match the numbered company name indicated on the copy of the cheque in the amount of \$1,150.00. In reaching this finding I have considered that the landlords did not submit a company search to support that the owner/operator of the numbered company is AK.

Secondly, I find the landlords breached section 13 of the *Act* which states:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;

(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[My emphasis added]

As the landlords failed to complete a tenancy agreement with AK in writing, **I caution** the landlords to comply with section 13 of the *Act* in the future.

Thirdly, although the landlord claims to have texts between the landlords and the respondent, copies of those texts were not submitted in evidence for consideration.

Based on the above, I find the landlords claim must fail due to insufficient evidence. Therefore, I dismiss the landlords claim in full without leave to reapply. As I am not satisfied that there is sufficient evidence before me to support that AK is a tenant I have purposely used the term respondent.

I will now address the landlord's comment that she was not aware that copies of text messages could be submitted in evidence. The Notice of Hearing document and the Rules of Procedure both indicate the process of which to submit documentary and digital evidence. In addition, there are contact numbers provided. In fact, the Notice of Hearing document reads in part that "evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing." Additionally, there are instructions on how to contact the Residential Tenancy Branch at the bottom of the Notice of Hearing document. As a result, I find that the

landlord's assertion that they were not aware that they could serve copies of texts to be unreasonable and I afford it no weight as a result.

Conclusion

The landlords' claim is dismissed due to insufficient evidence, without leave to reapply.

I do not grant the landlords the recovery of the cost of the filing fee.

The landlords have been cautioned to comply with section 13 of the *Act* in the future.

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: March 8, 2018

Residential Tenancy Branch