



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNDC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing, with the landlord being represented by their agent, E.S. (the “landlord”). Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant’s application for dispute resolution in person but said he did not receive any evidence. The tenant explained that he had emailed a copy of his evidentiary package to the landlord, and that the evidence he sent to the landlord was documents which had been provided to him by the landlord. I explained to the tenant, that I could not consider any evidence he had submitted because he had not served the landlord with his evidence in accordance with the *Act*. Email is not a permitted method of service. I find that the landlord was therefore only served with the tenant’s application for dispute resolution.

The tenant confirmed receipt of the landlord’s evidentiary package sent to him by way of Canada Post Registered Mail on April 11, 2018.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee associated with this application?

Background and Evidence

During the hearing, the parties agreed that this tenancy began on August 1, 2015 with rent being set at \$2,345.00 per month. The landlord stated that this tenancy ended on September 19, 2017, while the tenant maintained that this tenancy ended on September 30, 2017.

The tenant is seeking a monetary award of \$2,650.00 because of loss he purported to suffer as a result of the landlord's alleged mismanagement of his rental unit. The tenant alleged that he never agreed to move out and did not sign any papers indicating that he wished to move out. Furthermore, the tenant argued that the landlord's agent had forged his signature on documents associated with the tenancy. The tenant explained that he paid rent in full at the start of September 2017 and that for reasons not provided at the hearing, the tenant agreed to vacate the rental unit at the end of September 2017. The tenant said he contacted the landlord on September 22, 2017 to arrange a departure inspection and began moving things from the apartment. The tenant said that he returned to the apartment on approximately September 24, 2017 to find that his apartment had already been rented to another occupant.

The landlord disputed the version of events and said that the tenant returned the keys to the landlord on September 19, 2018. Following receipt of these keys, the landlord hired a cleaner and painter to prepare the suite for the following occupants. The landlord acknowledged that a new renter was immediately found, and began occupation on approximately September 24, 2018. The landlord said that upon receiving a complaint from the tenant about their actions, the landlord sent a cheque to the tenant for \$852.81 representing a return of his rent for the time period of September 19, 2017 to September 30, 2017. The tenant acknowledged receiving this cheque but said that he had not yet cashed it.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

The tenant sought a monetary award of \$2,650.00 for the mismanagement of his apartment that resulted in his apartment being pre-emptively rented out and occupied by another tenant at the end of September 2017. The landlord acknowledged that the tenant had paid rent for the entire month of September 2017 but argued that based on the tenant's actions (returning keys and providing notice) the tenant had vacated the rental unit on approximately September 19, 2017, making it available for re-rental. The landlord stated that upon realizing the mistake, the landlord reimbursed the tenant with a cheque for \$852.81 representing the rent which had been paid. The tenant did not dispute that the landlord had reimbursed him for the time that he was not in occupation of the rental unit but argued that the tenant's mismanagement had caused him loss.

After considering the evidence of the landlord, and the oral testimony of both parties, I find that the tenant has failed to show how he has suffered a loss from the tenancy or under the *Act* as is required for compensation under section 67. The tenant acknowledged being reimbursed for the time period that he had overpaid in rent and failed to produce evidence rebutting the landlord's evidence that he had moved out and returned the keys to the unit on September 19, 2017. For these reasons, the tenant's application for a monetary award is dismissed.

The tenant must bear the cost of his own filing fee.

Conclusion

The tenant's application for a monetary award is dismissed.

The tenant must bear the cost of his own filing fee.

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: May 2, 2018

Residential Tenancy Branch