



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNDC

Introduction

This hearing was convened in response to applications by the landlord 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.

Both the landlord’s agent, D.A., and the tenant attended the hearing. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord’s application for dispute, along with the landlord’s evidentiary package.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Can the landlord recover the filing fee associated with the application?

Background and Evidence

It was explained to the hearing that this was a fixed term tenancy which began on June 1, 2017 and was set to expire on May 31, 2017. Rent was \$1,825.00 per month, and a security deposit of \$925.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant said that because of a medical issue, she was forced to surrender the rental unit before the May 31, 2017 end date of the fixed term tenancy.

The landlord alleged that the tenant remained in the rental unit until October 3, 2017 and that rent was therefore due for the month of October 2017. The landlord sought a monetary award in relation to unpaid rent for October 2017, bank fees and a return of the filing fee.

The landlord sought to rely on a condition inspection report that was not produced at the hearing and which he said was completed by an agent for the landlord who did not attend the hearing. The landlord argued that the condition inspection report he had on file noted that an inspection was completed by the parties on October 3, 2017. In addition the landlord said that some emails, which were also not produced at the hearing, indicated that the tenant was in possession of the rental unit until October 3, 2017.

The tenant testified that she vacated the suite on September 30, 2017. She said she would have remained in the rental unit until the end of October 2017 if she had, as alleged by the landlord, been in occupation of the rental unit for the first few days of October 2017. Furthermore, the tenant said that a large amount of miscommunication and confusion had arisen between herself and the former agent for the landlord. She attributed these mixed-messages to the landlord's allegation that she was in the rental unit until October 3, 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, 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 landlord to prove entitlement to a claim for a monetary award.

After considering the oral testimony of the parties, and reviewing the evidence submitted by the landlord, I find that the landlord has failed to demonstrate that the tenant was in occupation of the rental unit until October 3, 2017. The landlord

referenced a condition inspection report, and some emails which he alleged detailed the tenant's presence in the unit; however, these documents were not produced at the hearing. Furthermore, even if I were to accept that a condition inspection report was completed by the parties on October 3, 2017, this does not indicate that the tenant was in occupation of the rental unit for the first three days of October 2017. The report could have been completed after the tenant had vacated the suite. I find that the landlord did not demonstrate based on the evidence presented at the hearing that the tenant was in occupation of the home at any point in October 2017. For these reasons the landlord's application for a monetary award is dismissed.

As the landlord was unsuccessful in his application, he must bear the cost of the \$100.00 filing fee.

Conclusion

The landlord's application for a monetary award and a return of the filing fee are 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: May 16, 2018

Residential Tenancy Branch