



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT

Introduction

The Application for Dispute Resolution (“application”) was filed by the tenant under the *Residential Tenancy Act* (“Act”) for a monetary order in the amount of \$10,800.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant, a support person for the tenant, and the landlords attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

The landlords testified that the tenant did not serve any documentary evidence upon them. The tenant did not dispute that fact during the hearing. The tenant confirmed that since filing her application she moved from her service address. The landlord affirmed that they served the tenant at the service address provided in her application. The tenant also confirmed that she did not update her service address since filing her application so as a result, the tenant was deemed served as I am satisfied that the tenant was served at the service address provided on the application based on the landlords undisputed testimony regarding service.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Is the tenant entitled to money owed or for compensation for damage or loss under the Act?

Background and Evidence

There is no dispute that the parties entered into a tenancy agreement. A copy of the tenancy agreement was submitted in evidence and indicates that the tenancy was to begin on November 15, 2017 and was to end on December 1, 2018. Monthly rent of \$900.00 was due on the first day of each month.

The tenant failed to provide a breakdown of their monetary claim in the amount of \$10,800.00 which the parties were advised I find to be the entire amount of what the tenant would have paid in rent for 12 months of rent at \$900.00 per month. The tenant writes in the details of dispute the following:

“I am requesting this amount because they had me sign a one year lease. I had to move to my new address and I feel they were not honest with their reason not to rent to me.”
[Reproduced as written]

The landlords submitted in their documentary evidence that after they had signed the fixed term tenancy, they were not happy with the tenant's reference as the reference did not check out as expected and that they decided not to rent to the tenant as a result.

The tenant failed to provide any breakdown of how she arrived at the amount of \$10,800.00 and also provided no documentary evidence in support of any amount lost due to the landlord's changing their mind about renting to her.

The parties were advised during the hearing that the tenant has failed to meet parts three and four of the four-part test for damages or loss under the *Act* and that the tenant's application was being dismissed in full without leave to reapply apply due to insufficient details as a result. In addition, the tenant was advised that the amount claimed which I noted was the entire amount the tenant would have paid in rent for a full year at \$900.00 per month was unsupported by any type of monetary breakdown or supporting documentary evidence or receipts for what I find to be an unreasonable monetary claim.

Analysis

Based on the above, and on a 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 tenant 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 landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant 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.

Based on what I find to be an unreasonable monetary claim by the tenant which I note did not include sufficient particulars as to how the tenant arrived at the amount of \$10,800.00 I find the tenant failed to meet parts three and four of the test for damages or loss under the *Act*. In addition I find that the tenant has failed to comply with section 7 of the *Act* which states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[My emphasis added]

I find the tenant has done the opposite of minimizing their monetary claim by claiming the maximum amount the tenant would have paid in rent for the entire term of the fixed term tenancy which I find to be unreasonable and unsupported by any supporting documentary evidence or receipts.

Therefore, **I dismiss** the tenant's application in full **without leave to reapply** due to insufficient evidence.

While I find the landlords' breached the *Act* by rejecting the tenant once the fixed term tenancy agreement was signed, I find the tenant has failed to prove the value of that breach is \$10,800.00. In addition, as noted above, I find the tenant also failed to minimize that damage or loss by applying for an amount that equates to the full amount the tenant would have paid in rent had the tenant been in the rental unit for a full year.

I caution the landlords not to sign or otherwise enter into a tenancy agreement in the future until all references checks have been completed by the landlords pertaining to a prospective tenant to avoid a repeat of this situation before me.

Conclusion

The tenant's application is dismissed in full without leave to reapply due to insufficient evidence.

The landlords have been cautioned as noted above.

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: June 19, 2018

Residential Tenancy Branch