



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Applicant AH, applicant PH and the respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Roommate

At the outset of the hearing, the parties explained that applicant AH has a written tenancy agreement with the landlord and without the landlord's consent; applicant AH rented a room to applicant PH. Applicant AH remained living in the unit with applicant PH until such time that the landlord issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). Both applicants vacated the unit in February 2018.

Although the parties have referred to this situation as an illegal sublet, Residential Tenancy Branch Guideline 19 establishes that a room rented out while the original tenant remains does not constitute a true sublet. Rather the situation as described

above indicates that applicant PH is an occupant/roommate, with no rights or responsibilities under the *Act*. Accordingly, I find that applicant AH (the “tenant”) is the sole tenant of this tenancy.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2016 on a month-to-month basis. Rent in the amount of \$700.00 was payable on the first of each month.

In the tenant’s application he seeks the return of his security deposit in the amount of \$3,500.00. During the hearing, the tenant initially testified that he remitted a security deposit in the amount of \$350.00 at the start of the tenancy. After the landlord testified that the tenant painted the unit in lieu of a security deposit and first month’s rent, the tenant changed his testimony and agreed he did not pay a security deposit.

The tenant seeks a monetary order in the amount of \$3,500.00 for the theft of personal belongings, abuse, and loss of hot water. In reply, the landlord testified that he did not take any personal belongings, he did not abuse the tenant and that he fixed the hot water tank as soon as the issue was reported to him by the upstairs tenant.

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 this case, the onus is on the tenant to prove, on a balance of probabilities, 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 landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails. In this case, the landlord disputes the tenant's claim and the tenant has failed to substantiate his claim with sufficient evidence. The tenant did not specify what items were taken, the value of such items, what abuse occurred, when it occurred or when he first reported the hot water issue to the landlord. For these reasons, I dismiss the tenant's monetary claim of \$3,500.00 without leave to reapply.

As the tenant acknowledged that he did not pay a security deposit, I dismiss this portion of the tenant's claim without leave to reapply.

Conclusion

The tenant's entire 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: October 23, 2018

Residential Tenancy Branch