



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LTE VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order in the amount of \$693.00 for the money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant and two agents for the landlord LC and LT, ("agents") attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed that they had been served with documentary evidence and had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

In addition to the above, the landlord referred to a previous decision which was dated September 12, 2018 ("previous decision"). The previous decision dealt with applications from both parties which is cross-application. The previous decision file numbers have been referred to on the cover page of this decision for ease of reference.

Issue to be Decided

- Is the tenant entitled to the return of \$693.00 of September 2018 rent under the Act?

Background and Evidence

The tenant is seeking the return of \$693.00 of the \$1,300.00 rent paid for the month of September 2018. In the previous decision, an arbitrator made a finding that the tenancy based on a signed Mutual Agreement to End Tenancy ("mutual agreement") effective August 31, 2018, which I also accept. However, the tenant failed to vacate the rental unit and according to the parties, did not vacate the rental unit until September 14, 2018.

The landlord was granted an order of possession in the previous decision, which was effective two (2) days after service on the tenant. The tenant stated that he made a request to remain in the rental unit until the end of the September 2018. That request was clearly denied by the landlord as the parties confirmed the tenant was served with the order of possession on September 12, 2018 and vacated the rental unit on September 14, 2018.

The agents confirmed that the landlord began to advertise the rental unit once the tenant vacated the rental unit on September 14, 2018. The agents also confirmed that new tenants moved into the rental unit effective October 1, 2018. The agents testified that no amount was paid by the new tenants for September 2018 as they did not occupy the rental unit until October 1, 2018.

Analysis

Based on the above and the evidence provided, 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 and/or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. 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 is 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.

I find the tenant has provided insufficient evidence to support all four parts for the test for damage or loss as indicated above. The tenant made the decision not to vacate the rental unit by August 31, 2018 at 1:00 p.m. Instead, the tenant occupied the rental unit until served with the order of possession and eventually vacated the rental unit on September 14, 2018. Section 26 of the *Act* states that a tenant must pay rent on the date that it is due in accordance with the tenancy agreement. Therefore, I find the tenant owed all of September 2018 rent on September 1, 2018 and is not entitled to remain in the rental unit once served with a valid order of possession. I find the order of possession was valid and enforceable based on the previous decision, the tenancy was found to have ended on August 31, 2018. Consequently, I dismiss the tenant's application due to insufficient evidence, without leave to reapply.

Conclusion

The tenant's claim has no merit and is dismissed without leave to reapply, due to insufficient evidence.

The decision will be emailed to both parties as indicated 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: January 21, 2019

Residential Tenancy Branch