



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage or loss under the Act, regulations and tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on September 20, 2018. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is there damage or loss under the Act, regulations or tenancy agreement and if so how much?
2. Is the Landlord entitled to compensation for the damage or loss and if so how much?

Background and Evidence

This tenancy started on June 1, 2014 as a 1 year fixed term tenancy with an expiry date of May 30, 2015 and then the tenancy renewed on a month to month basis. Rent was \$2,667.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,250.00 on May 15, 2014. The Landlord said a move in condition inspection report was completed. The move condition inspection report was not in the Landlord's evidence package although she thought that she sent it. The Arbitrator requested the report to be emailed to him but the Landlord was unable to send the report to the Arbitrator. The Tenant said that he did not receive the condition inspection report as well. The tenancy ended on August 31, 2018.

The Landlord started to explain her monetary claim and the Tenant said that he did not receive any itemized monetary claim just the number \$34,050.00 as the claim. The Landlord said she thought she had sent all the information with the application package. The Tenant agreed to continue but he said he was at a great disadvantage not having the Landlord's full evidence package.

At this point the Arbitrator asked the Landlord if she had included any supporting corroborative evidence like paid receipts or cost estimates for her claims. The Landlord said she did not include any paid receipts or cost estimates, but she did provide some photographs of the damage. The Landlord said she made the estimates for the costs of repairs.

At this point the Tenant was reluctant to continue without the Landlord's itemized monetary claim and with no evidence supporting the Landlord's monetary claims.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord was unable to provide information to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the Landlord has not established proof that the Tenant damaged the rental unit.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has not provided paid receipts or valid cost estimates to support her claims that a loss actually exists. Further the Landlord has not verified the loss with paid receipts or valid cost estimates. Therefore the Landlord has not met the burden of proof for her claim to be successful. Consequently, I dismiss the Landlord's application

for loss or damage under the Act, regulations and tenancy agreement with leave to reapply.

As well, as the Landlord was not successful in this matter I dismiss her application to recover the filing fee of \$100.00 from the Tenant.

Conclusion

The Landlord's application is dismissed with leave to reapply due to a lack of evidence.

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: January 15, 2019

Residential Tenancy Branch