



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

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 \$385.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the tenant's security deposit, and to recover the cost of the filing fee.

The tenant and the landlord 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord confirmed having been served with the tenant's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The landlord also confirmed that they did not serve the tenant with any documentary evidence in response to the tenant's application. I find the landlord was sufficiently served under the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the tenant entitled to money owed for compensation for damage or loss under the *Act*?
- What should happen to the tenant's security deposit under the *Act*?
- Is the tenant entitled to the recover of the cost of the filing fee under the *Act*?

Background and Evidence

Although the parties agreed that a written tenancy agreement existed between the parties, a copy was not submitted in evidence for my consideration. The parties agreed that the tenancy began on May 1, 2017 and ended on June 14, 2019, when the tenant returned the rental unit keys to the landlord. The parties agreed that at the start of the tenancy, monthly rent was \$1,100.00 per month and was due on the first day of each month. The parties also agreed that by the end of the tenancy, monthly rent had been increased to \$1,125.00 per month.

The tenant paid a security deposit of \$500.00 at the start of the tenancy and both parties agreed that the landlord returned \$750.00 to the tenant after the tenant vacated the rental unit.

The tenant is seeking the return of \$185.00 for what the tenant alleges was a rent overpayment of for June 2019. The tenant is also seeking \$200.00 for what the tenant describes as damage. During the hearing, the tenant testified that the landlord stated that the landlord agreed to return ½ a month of rent back to the tenant, which the landlord vehemently denied. The tenant confirmed that there were no texts or written agreement submitted in evidence to support the agreement the tenant described with the landlord. The landlord stated that they returned more than what the tenant was entitled to because the tenant is an "old lady". The landlord denied that they agreed to return ½ of month of rent to the tenant in compensation.

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 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 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 the above, I find the tenant has failed to provide sufficient evidence to support their entire monetary claim. I also find the tenant has failed to meet all four parts of the test for damage or loss described above. Neither party provided any documentary evidence to support that a written agreement exists between the parties, to support that the landlord agreed in writing to compensate the tenant for vacating the rental unit. In fact, the tenant confirmed receiving \$250.00 more than what the tenant paid for a security deposit. Consequently, I find the tenant's claim has no merit and fails in its entirety. Therefore, I dismiss the tenant's application in full without leave to reapply due to insufficient evidence.

I do not grant the filing fee as application has failed in full.

Conclusion

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

The filing fee is not granted.

This decision will be emailed to both parties.

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: October 25, 2019

Residential Tenancy Branch