



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application and evidence by registered mail. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's materials in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in July 1, 2018 and ended July 31, 2019. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord submits that the tenant caused some damage to the rental suite during the tenancy requiring cleaning, repairs and work to be done. The landlord submitted into evidence a condition inspection report which is not signed by either party at the start of the tenancy and is only signed by the landlord at the end of the tenancy. The landlord provided no documentary evidence showing that the tenant participated or was given two opportunities to participate in an inspection during the tenancy.

The landlord also submitted into documentary evidence photographs of the suite with handwritten notes. The landlord testified that the damage to the suite was caused by the tenant and that they incurred costs of \$740.00 for labour and materials related to cleaning and repairing the suite.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that in the absence of a proper condition inspection report prepared and signed by the parties at the start of the tenancy there is insufficient evidence to establish that the condition of the suite at the end of the tenancy is attributable to the tenant. The copy of the condition inspection report submitted into documentary evidence contains only the signature of the landlord dated August 1, 2019. While the report details the state of the suite at the start of the tenancy, without the parties' signatures, I find there is insufficient evidence that it was completed by the parties at the start in accordance with the *Act* and regulations.

I do not find the landlord's testimony attributing the damage and costs incurred to the tenant or the photographs submitted to be sufficient to determine on a balance of probabilities that the tenant is responsible for damages and loss. A landlord is required to complete a condition inspection report at the start of the tenancy, precisely to avoid the ambiguities that arise in the present case. I find that the copy of the report signed only by one party at the end of the tenancy to be insufficient to establish the condition of the suite at the start of the tenancy or to show that damages to the suite are the result of the tenancy. As the landlord has not met their evidentiary burden, their application is dismissed.

Conclusion

The landlord's application is dismissed in its entirety 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: December 9, 2019

Residential Tenancy Branch