



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Has the tenant established a claim for a monetary order for damages or compensation pursuant to section 67? Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that I would only refer to any of the documents they specifically referred to in testimony in this decision. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on June 1, 2019 with rent set at \$1,000.00 per month, payable on the first day of the month. A security deposit of \$500.00 was collected from the tenant

however the parties agree that the tenant was permitted to use this money as a partial payment for the rent for July, 2019.

The landlord provided the following testimony. The rental unit is located in a house that is occupied by 6 tenants. The landlord does not live on the property. On July 1, 2019, the landlord came to collect rent but the tenant asked the landlord if the security deposit could be used to pay until July 15th as the tenant would be moving out on July 15th. On July 15th, the tenant advised the landlord that he needed to stay until July 31st. The tenant gave the landlord an additional \$250.00 in rent for July on July 20th. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 27th and the tenant moved out of the rental unit in accordance with the Notice on August 1, 2019. The landlord submits that the tenant remains in arrears of rent for \$250.00 for the remainder of July.

The tenant testified the landlord verbally offered the tenant \$250.00 to leave the tenancy early however the landlord denies any such offer was made. The tenant testified that the condition of the rental unit was unfit. He asked the landlord's wife about regular professional cleaning of the carpets and cockroaches and complained about the irregular hot water in the rental unit. The tenant also testified it was landlord's responsibility to take out the garbage. The tenant testified that the landlord's wife deemed him a 'troublemaker' and wanted to evict him.

The tenant called a former occupant of the house, RM as a witness. The tenant's witness testified that he doesn't have any knowledge about the verbal agreement to provide the tenant with a 'move-out' expense of \$250.00. When asked about condition of the house, the witness testified that the home was basically looked after though not cleaned a lot. The chores were left to the tenants and it got grimy and debris filled. When the landlord asked if the house was liveable, the witness responded with "I'd say so." The witness added that a couple of times the temperature gauge got chilly and that the landlord didn't always respond to repair requests.

When I asked the tenant about the nature of his claim, the tenant responded as follows: This tenancy agreement is cheating. I am a victim. This is not a rental. It was intended to make money. The landlord is a money hunter with no respect. We are paying machines. The contract was signed between humans and there is no truth to it. No expressing of intentions, no respect, truth or equality. The tenant asks that the arbitrator cancel this contract for unjust enrichment and to restore the tenant's original situation.

The tenant did not specify which sections of the Act, the Regulations or the tenancy agreement he felt the landlord was not complying with. He emphasized that he still feels the arbitrator should cancel the tenancy agreement although I advised him the tenancy agreement ended when the tenant moved out of the rental unit.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In order to succeed in his claim, the tenant must be able to show the landlord failed to comply with a section of the *Residential Tenancy Act*, the *Residential Tenancy Regulations* or the tenancy agreement. In the case before me, I find the tenant has not provided sufficient evidence to show any section of the *Residential Tenancy Act*, the Regulations or the tenancy agreement has been breached. It is beyond the authority of an arbitrator to determine any other legal basis beyond the *Residential Tenancy Act* for the tenant's claim.

Section 26 of the Act states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The tenant is claiming \$1,750.00, the amount of rent he paid for June and July of 2019. The tenant has not established any right to deduct any portion of the rent he paid for the duration of his tenancy. I find no reason to compensate the tenant with a full reimbursement of the rent he was required to pay to the landlord rent in accordance with section 26.

I find the tenant has not met the burden of proving on a balance of probabilities that the landlord failed to comply with the Act. The tenant's application for compensation pursuant to section 67 of the Act is dismissed without leave to reapply.

Conclusion

The tenant's 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: December 16, 2019

Residential Tenancy Branch