



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL, FFL**

Introduction

This hearing, conducted by a conference call, dealt with the landlord's applications under the *Residential Tenancy Act* (the *Act*) for:

- A monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to give affirmed testimony, present evidence, make submissions and call witnesses.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's materials and said they had not served any evidence themselves. Based on the testimonies I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 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

The landlord submits that this was a fixed term tenancy scheduled to begin on November 1, 2019 with monthly rent in the amount of \$1,800.00. The landlord submitted a copy of the tenancy agreement and addendum into evidence. The copy submitted is not signed by the tenant and provides a start and end date of the tenancy

of November 1, 2019. The landlord testified that there is a version that is signed by both parties.

The tenant disputes that a tenancy agreement was ever signed and submits that they were in negotiation with the landlord when the decision to not proceed with the tenancy was made.

The parties agree that the tenant paid \$100.00 as an application fee that would have been applied against the security and pet damage deposit for this tenancy of \$900.00 each. The tenant said that they authorized the landlord to keep the \$100.00 payment when they chose not to proceed with the tenancy.

On October 17, 2019 the tenant gave written notice to the landlord and stated that they would not be able to move in and commence the tenancy. The landlord testified that upon receiving the tenant's notice they began seeking a new tenant. The landlord said that they were unable to find a new occupant until the end of December, 2019.

The landlord seeks a monetary award in the amount of \$1,700.00, the equivalent of the unpaid rent for November, 2019.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

In the present case the copy of the tenancy agreement submitted by the landlord is not signed by the tenant and the tenant disputes that there was ever an agreement. The parties agree that a payment of \$100.00 was made but describe the payment as an application fee.

Based on the evidence of the parties I am unable to see that there was a meeting of minds where a tenancy agreement was entered by both parties. The documentary evidence merely shows that a tenancy agreement and addendum were drafted. The

correspondence of the tenant on October 17, 2019 states that they are “no longer in a position to move” and does not reference an agreement having been made. The tenant testified that they were still in the midst of negotiating terms such as the payment of utilities and no agreement had been reached. While the landlord gave testimony that there was a written tenancy agreement signed by both parties, one was not submitted into evidence and its existence disputed by the tenant.

Based on the totality of the evidence I find that I am not satisfied on a balance of probabilities that there was an enforceable agreement in place between the parties. I find it equally likely that the parties were still in the process of negotiating terms and therefore no obligations were yet created. When there are two equally likely scenarios the applicant cannot be said to have met their evidentiary onus.

I find that the landlord has not met their evidentiary burden to show that there was a breach of the Act, regulations or an enforceable tenancy agreement from which monetary losses arose.

Accordingly, I dismiss the landlord’s application without leave to reapply.

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: March 19, 2020

Residential Tenancy Branch