



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDCL, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt cross Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The landlord applied for:

- a Monetary Order as compensation for loss or damage under section 67 of the Act; and
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act.

The tenant applied for:

- authorization to obtain a return of double their security and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties confirmed that they had both exchanged their Notice of Dispute Resolution and Application for this hearing.

Service of Evidence

Based on the submissions before me, I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act.

Based on the submissions before me, I find that the tenant's evidence was served to the landlord in accordance with section 88 of the Act.

Issues to be Decided

Is the landlord entitled to a Monetary Order?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to the return of double her security and pet deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, **but will refer only to what I find relevant for my decision.**

Evidence was provided showing that this tenancy began on February 1, 2021, with a monthly rent of \$2,500.00, due on the first day of the month. HT testified that no security or pet deposit were paid. HT testified that the tenant failed to pay \$700.00 of the rent for April 2022 and \$1050.00 from April 2023. HT testified that the tenant didn't provide proper notice when she ended the tenancy. HT testified that on April 2, 2023 the tenant's daughter gave notice that she was moving out. HT testified that the tenants didn't move out until May 2, 2023. HT is seeking \$2500.00 for the loss of revenue for May 2023 and the filing fee for a total claim of \$4350.00.

CH testified that there is no unpaid rent from April 2022 or April 2023 and that the landlord had other arrangements with the occupants in the unit. CH testified that her daughter gave proper notice to the landlord, but the landlord failed to mitigate his losses by not trying to rent out the suite. CH testified that she paid the previous owner of the home \$1250.00 security deposit and pet deposit of \$1250.00. The tenant seeks the return of double her deposits with interest and the filing fee for a total claim of \$5116.04.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, **the party making the claim has the burden to**

provide sufficient evidence over and above their testimony to establish their claim.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I address the landlords claim and my findings as follows:

Unpaid Rent

The landlord did not provide sufficient evidence to support his claim for unpaid rent for April 2022 and April 2023. Due to the very minimal and vague documentation before me, I dismiss the landlords claim for unpaid rent as they have not satisfied me of all four elements as noted above.

Loss of Revenue

As noted above, a party must make attempts to mitigate any losses pursuant to section 7(2) of the Act. The landlord states that the tenants gave notice on April 2, 2023 to move out by the end of the month but did not provide sufficient evidence of his attempts to rent the suite and minimize and mitigate any potential losses, accordingly; I dismiss this portion of the landlords claim for lack of mitigation.

As the landlord has not been successful in his application, he is not entitled to the recovery of the filing fee, and I therefore dismiss that request without leave to reapply.

I address the tenants claim and my findings as follows:

The tenant requests the return of double her deposits. The landlord testified that no deposits were ever paid. The tenant did not provide sufficient proof of payment to corroborate her allegation of paying them. The tenant refers to a tenancy agreement, however the landlord testified that he only went by the tenants' word at the time but has

never received a deposit. As noted above, the party making the claim bears the burden of proving their claim. Based on the insufficient evidence before me, I hereby dismiss this portion of the claim without leave to reapply.

As the tenant has not been successful in her application, she is not entitled to the recovery of the filing fee and I therefore dismiss that request without leave to reapply.

Conclusion

The landlords application is dismissed in its entirety without leave to reapply.

The tenant'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 21, 2023

Residential Tenancy Branch