



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for compensation for damage or loss under the Act. The tenant was in attendance with an advocate

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 29, 2009, the Landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for “unused” rent which was paid in advance on November 11, 2008 to cover rent for the period from November 11 until December 1, 2008 and reimbursement for rent paid for alternate accommodation and costs of groceries.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the tenant submitted proof of the existence and monetary amount of the damage or loss?

- Has the tenant submitted proof that the damage or loss was caused by the respondent through a violation of the Act by the respondent?

The burden of proof is on the applicant.

Background and Evidence

The tenant submitted no evidence but testified that on November 11, 2008, he paid the landlord \$350.00 for use of the premises until December 1, 2008. However, on November 20, 2008, the tenant was evicted by the landlord. The tenant testified that, despite having paid for another ten days of lodging, he came home to find his possessions on the porch along with groceries he had purchased. The tenant testified that he was forced to find alternate accommodation at a cost of \$140.00.

Analysis

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a tenant or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances. I find that in order to justify payment of damages under section 67, the Applicant must prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

The party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to 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 landlord.

I find that the tenant has only provided verbal testimony in regards to the existence of a tenancy relationship, the payment of rental funds in the amount of \$350.00, the eviction and the other expenditures. If there was a tenancy and the landlord took the actions being alleged, it would indeed be a violation of the Act as a tenancy can only be ended according to provisions in the Act . I find nothing in the Act that give a landlord the right to end the tenancy in the manner described. However, even if the tenant had submitted evidence to prove that there was a tenancy and that the landlord willfully contravened several sections of the Act, the amounts for damages and loss being claimed have not been verified with evidence and I find that I am unable to consider verbal testimony to be sufficient support for a monetary order

I find that the tenant has not succeeded in satisfying the criteria under any element of the test for damages. Accordingly I find that the tenant is no entitled to monetary compensation and the tenant's claims must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby dismiss the tenant's application without leave, in its entirety.

February 2009

Date of Decision

 Dispute Resolution Officer