

DECISION

Dispute Codes OPR MNR MNSD FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 16, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on October 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed that she did not submit documentary evidence in support of her application. The Landlord stated that she issued the Tenant a notice to end tenancy and the Tenant has vacated the rental unit without paying the last month of rent.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 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 regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord 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.

The Landlord did not provide documentary evidence in support of her claim and there is no evidence before me to prove that a tenancy existed between the applicant and respondent. Based on the aforementioned I find that the Landlord has failed to prove the test for damages as listed above, and I hereby dismiss the Landlord's claim without leave to reapply.

As the Landlord was not successful with her claim, I hereby dismiss her request to recover the cost of the filing fee, without leave to reapply.

The Landlord is hereby ordered to disperse the Tenants' security deposit plus interest in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Landlord's application, 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 01, 2009.

Dispute Resolution Officer