



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, & FF

Introduction

This hearing dealt with the landlord's application seeking a monetary claim against the tenant due to alleged damage to the rental unit and a failure to clean the rental unit. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Preliminary Issues

The landlord submitted a packet of photographs to the Residential Tenancy Branch for this hearing on January 10, 2011. This was only 3 business days before the scheduled hearing. The landlord did not provide a copy of these photographs to the tenant.

Rule 3.5 of the rules of procedure require that any evidence that an applicant intends to rely upon for an application must be received by the Residential Tenancy Branch and served upon the respondent at least 5 days before the dispute resolution proceeding.

I find that the landlord's evidence is not admissible as it was not served on the respondent and not provided within the timeframe provided by the rules of procedure. Therefore, the landlord's evidence has not been viewed or considered as part of this dispute resolution process.

The landlord also requested an adjournment of the proceeding on the basis that a witness and agent of the landlord were not able to attend on the scheduled hearing date.

Rule 6 of the rules of procedure outline the requirements for seeking an adjournment of a scheduled dispute resolution process. A hearing can be rescheduled a hearing up to 3 days before a scheduled hearing if both parties consent. If consent is not granted, the party seeking an adjournment must again 3 days before the scheduled hearing submit a written request for the adjournment including reasons for the adjournment.

The landlord stated that a witness/agent of the landlord was required to work and therefore could not attend the hearing. However, the landlord did not provide any reasons why the landlord could not have dealt with this before the hearing date. The landlord has known of the hearing date for 5 months but made no attempt prior to have the hearing rescheduled.

I was not satisfied that the landlord took reasonable measures to seek an adjournment once she became aware that the witness/agent was unavailable and I found it prejudicial to the tenant to grant an adjournment. Therefore, I denied the landlord's request for an adjournment.

Issue(s) to be Decided

Has the landlord established a monetary claim due to damage to the rental unit and costs related to cleaning the rental unit?

Background and Evidence

The landlord gave disjointed and confusing verbal testimony. The landlord could not provide consistent account of when the tenancy began and appears to have not kept any written records. The landlord claimed that the monthly rent was \$1,300.00 and that the security deposit of \$410.00.

The tenant submitted that her tenancy began April 2009 for the monthly rent of \$1,175.00 and a security deposit of \$587.50. The tenant stated that she began this tenancy as a roommate with other occupants who subsequently vacated in May 2009. The tenant stated that the tenancy ended as of August 31, 2010 by mutual agreement. The mutual agreement was reached during a previous dispute resolution proceeding.

The landlord seeks a monetary claim for the sum of \$2,000.00 based on dirty carpets, debris left in the house and issue of loss of rent for a deck. The landlord did not provide any receipts to verify this claim.

The tenant disputed the landlord's claim but did concede to the landlord retaining her security deposit.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

With respect to the terms of the tenancy agreement, I accept the oral testimony of the tenant over the testimony of the landlord. The tenant's testimony around the terms of the tenancy was firm and prompted without hesitation while the landlord's evidence was confused, inconsistent and unreliable. Therefore, I accept that the tenancy began on April 1, 2009 for the monthly rent of \$1,175.00 and a \$587.50 security deposit.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Given the lack of evidence and the disputed oral testimony I find that the landlord's application must be dismissed without leave to re-apply. The landlord has failed to establish the monetary relief requested in this application. I have insufficient evidence that the tenant breached the tenancy agreement and no evidence to establish the damages claimed.

I Order that the landlord may retain the tenant's security deposit pursuant to section 38(4) of the *Act*, based on the tenant's oral confirmation during the hearing.

Conclusion

The landlord's application is dismissed without leave to re-apply.

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: January 17, 2011.

Residential Tenancy Branch