



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order in compensation for damage to the unit and cleaning and to retain the tenant's security deposit in partial satisfaction for the claim.

The landlord appeared and gave testimony. Despite being served in person, the tenant did not appear

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages.

Background and Evidence

The landlord testified that the fixed term tenancy began in September 2010 and ended on June 6, 2011. The rent was \$750.00 and a security deposit of \$375.00 was paid.

The landlord testified that the tenant had not fulfilled the tenant's responsibilities under the Act to leave the unit reasonably clean and undamaged. The landlord testified that they incurred a cost of \$375.00 and seek to keep the tenant's security deposit to compensate for the losses.

No evidence was found in the file. However, the landlord stated that she had submitted 10 pages of evidence including a copy of the tenancy agreement, a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and copies of the move-in and move-out inspection report.

Analysis

It is important to note that in a claim for damage or loss under the Act, 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 landlord, 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 respondent.

However, the failure to submit evidentiary support to verify the monetary claims, and serve this evidence on the respondent at least 5 days prior to the hearing, has affected the landlord's ability to meet the burden of proof to satisfy the test for damages.

Therefore, I find that the landlord's application is without merit due to insufficient evidentiary proof and must be dismissed.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety without leave to reapply.

I further find that the landlord is not entitled to retain the tenant's \$375.00 deposit which is held in trust on behalf of the tenant. The landlord is required is required to return the deposit to the tenant in compliance with section 38 of the Act and I hereby issue a monetary order in favour of the tenant for this amount. This order must be served on the landlord and, if necessary can be enforced by Small Claims Court..

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: September 16, 2011.

Residential Tenancy Branch