



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF, O

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for the following issues: a Monetary Order for damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to recover the filing fee from the Tenant; and, for “Other” issues of which none were disclosed during the hearing.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord called a witness during the hearing who also provided affirmed testimony. The Tenant confirmed receipt of Landlord’s Application by registered mail. The Landlord confirmed that she had not provided any documentary evidence prior to this hearing.

The Tenant confirmed that she had provided documentary and photographic evidence prior to this hearing; however, no such evidence was before me. The Landlord confirmed receipt of the Tenant’s evidence prior to the hearing. Therefore, I asked the Tenant to provide the Canada Post tracking number for the service of her evidence to the Residential Tenancy Branch. The Canada Post website states that a package was sent but there is no record of it being delivered. Neither was there any evidence on the electronic records pertaining to this file that evidence from the Tenant had been received.

The Tenant explained that her evidence related to the cleaning of the rental suite; however, I determined at the start of the hearing that the Landlord’s monetary claim did not relate to cleaning costs.

Based on the foregoing, I decided to proceed with the hearing and with a view to adjourning the hearing after hearing the parties’ evidence if it was required for me to view the Tenant’s evidence in order to make a decision in this matter.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions, and cross examine the other party and the witness on the evidence provided. I have considered the evidence provided by the parties in this case as follows.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages to the unit and loss of rent for July 2014?

Background and Evidence

Both parties agreed that this month to month tenancy started on February 1, 2014 and ended June 1, 2014. The Tenant resided in the rental unit with her partner. No written tenancy agreement was completed. Rent was \$840.00 per month payable in advance on the first day of each month. The Tenant's security deposit was dealt with in a different hearing which took place on March 3, 2015 (the file number for which appears on the front page of this decision). The parties also confirmed that the Landlord had not completed a move in or move out Condition Inspection Report.

The Landlord had applied for \$1,200.00 monetary claim against the Tenant. The Landlord had made a number of allegations against the Tenant in the details of the dispute section of her Application. The Landlord was asked to explain what the \$1,200.00 claim against the Tenant comprised of.

The Landlord explained that \$840.00 related to lost rent for July, 2014 and the remainder of the claim related to costs associated with pest control. The Landlord testified that after the Tenant vacated the rental unit, the Landlord sent an agent to the property several days later in order to conduct a viewing with another renter. During the viewing, the agent noticed an abundance of fleas in the rental unit as the Tenants had pets in the rental unit. The Landlord testified that the potential renter was bitten by the fleas and refused to rent the unit.

The Landlord testified that she contacted the Tenant's partner to explain that they had left a flea problem in the rental unit and that he was to return and help her to clean it up. The Landlord testified that the Tenant's partner returned and they treated the rental unit together but it needed multiple treatments. The Landlord testified that the Tenant's partner committed to coming back on two occasions to ensure the flea problem had been eradicated. However, the Tenant's partner did not return.

The Landlord testified that she had to treat the rental unit and dispose of furniture which she had provided as part of the rental unit to the Tenant. The Landlord testified that she lost rent for two months as a result of having to conduct multiple treatments of the flea problem but only claims for one month's rent from the Tenant. When the Landlord was asked whether she had any receipts to verify the losses she claims for treating the pest problem, the Landlord said she did not have this.

The Landlord called the agent she used to conduct the viewing of the rental unit to provide evidence as a witness. The witness confirmed that he was a long-time friend of the Landlord. The witness testified that when he conducted the viewing of the rental unit there was an extreme flea problem in the unit and that this had been caused by the Tenant's partner. The witness confirmed that the prospective renter had been bitten. The witness was asked whether he had been bitten to which he replied no. The witness confirmed the Landlord's testimony that the Tenant's partner had returned to help deal with the pest problem on one occasion but had reneged on his promise to return on two other occasions.

The Tenant did not have any questions for the witness. The Tenant explained that when they vacated the rental unit, the rental unit was left clean and tidy and there was no flea problem evident to her. The Tenant testified that she had a white cat and that she would have seen fleas on her if this was the case. When the Tenant was asked whether her partner had returned to the rental unit to assist the Landlord in treating the rental unit, the Tenant explained that she was no longer with her partner and could not comment on whether her partner had gone back to the rental unit or not. The Tenant submitted that the Tenant had gone back to the rental unit for a number of reasons which were not related to the alleged flea problem. The Tenant disputed the Landlord's claim.

Analysis

A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Based on the oral evidence of both parties, I find as follows.

The Landlord relies solely on her oral evidence with respect to the allegation that the Tenant left a flea problem at the end of the tenancy which the Landlord had to deal with. Section 35(1) of the Act requires that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed date.

In this case, I find the Landlord failed to provide a move in or move out Condition Inspection Report which would have documented and shown the flea problem had the parties examined the rental unit together at the end of the tenancy in accordance with the Act. The Tenant denied that there was a flea problem at the end of the tenancy. Therefore, I find that this evidence is not sufficient to show that there was a flea problem that existed at the end of the tenancy and that this was caused by the Tenant.

I also find that the Landlord's witness evidence that the potential renter had been bitten during the viewing of the rental unit is also not sufficient evidence alone to prove the Landlord's claim. I find the witness testimony is not independent as the witness was a long-time friend of the Landlord. Furthermore, the witness testimony and the Landlord's testimony are not supported by corroborating evidence such as photographs or video evidence showing the existence or the extent of the flea problem in the unit or medical evidence of the potential renter's flea bites. In the face of such a serious issue it would be reasonable to expect that a claimant would have gathered and been in possession of such supporting evidence. In this case, the Landlord was not.

Furthermore, the Landlord claimed for cleaning costs associated with the labour and materials she purchased to remedy the pest problem. However, the Landlord failed to

provide any invoices to verify these losses, which is a key component of the test detailed above.

In conclusion, I find that the Landlord has failed to provide sufficient evidence to meet the above test to prove her claim. The Tenant disputed the Landlord's evidence. As a result, I find the Landlord's evidence results in one parties' word against the others and the Landlord's evidence is no more compelling than the Tenant's evidence. Therefore, the Landlord's claim must fail.

Conclusion

The Landlord has failed to meet the burden of proof for her monetary claim. Therefore, I dismiss the Landlord's Application **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: September 08, 2015

Residential Tenancy Branch

