

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

MNDC, LRE

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act* and for an order to direct the landlord to return the tenant's personal property.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the tenant suffer a loss due to negligence on the part of the landlord? Does the landlord have in his possession, the personal property belonging to the tenant? Is the tenant entitled to a monetary order for loss of his personal property and the hardship that he alleges he has suffered due to a violation of the *Act* by the landlord?

Background and Evidence

The landlord lives in a trailer that he rents from the Mobile Home Park. The tenant moved into the trailer on June 01, 2009 and agreed to pay \$412.50 towards the rent. The tenant agreed that he did not pay rent for June and on June 04, 2009 his girlfriend moved into the trailer.

The tenant and his girlfriend smoked in the trailer and threw cigarette butts out the window on to the outside lawn. The neighbour in the next trailer objected to this practice due to the potential for fire. The landlord stated that other residents complained to the Mobile Home Park office about the behaviour of the tenant and his girlfriend stating that they were being verbally abusive toward other residents and driving within the Park, under the influence of alcohol.

On June 29, 2009, the Park Office issued a notice of warning to the landlord regarding smoking inside the unit, throwing cigarette butts onto the grass, disruptive behaviour and using vulgar language. The landlord filed a copy of this warning letter into evidence. The tenant returned to the trailer at around 11:00 p.m. and when the landlord advised him that he would have to move, the tenant handed the keys over to the landlord and left. The landlord packed the tenant's belongings and placed them in the verandah outside the trailer.

The tenant stated that he is unable to take his belongings as he does not have a place to store them. The tenant stated that some of his items were ruined in the rain and is requesting to be compensated for the value of these items. The only evidence that the tenant has filed is a hand written list of items which includes original oil paintings, stereo and electronic equipment, furniture, clothing, tools, photographs and medication. The tenant has not filed any other evidence regarding the value or existence of these items. The tenant is also claiming compensation for "hardship and being homeless" for a total of \$5,000.00.

Analysis

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, 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 other party 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.

The tenant bears the burden of establishing each claim on the balance of probabilities. The tenant must 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. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In this case, the tenant has not filed any evidence to support his claim of the existence of the damage. In addition, he is not able to establish that the problem resulted from negligence on the part of the landlord. By the tenant's own admission, he returned the keys to the landlord and moved out thereby causing his own hardship and homelessness. He also stated that he is unable to pick up his personal belongings as he does not have a place to store them. Accordingly, I find that the tenant's claim does not satisfy all the components of the above test and is therefore dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

Dated August 18, 2009.

Dispute Resolution Officer