



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OPR, MNR, FF,

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with three applications for dispute resolution, two brought by the tenant and one brought by the landlord. All files were heard at the same hearing.

The landlords application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for an order for outstanding rent and utilities, and a request of the respondent bear the \$50.00 cost of the filing fee that was paid for the landlords application for dispute resolution.

The tenant's first application is a request for the return of alleged overpayment in rent in the amount of \$750.00.

The tenant's second application is a request for a monetary order for \$5,596.34 to recover his losses from a break-in at his rental unit.

I will deal with each of the applications separately below.

Landlord's application

Background and Evidence

At the hearing the tenant stated that he does not dispute the landlord's application in any way and that he owes the full amount claimed by the landlord.

Therefore since this application is undisputed, I have allowed the landlords application for an Order of Possession.

I further find in favour of the landlords reduced claim for \$1370.00 in outstanding rent and utilities and for the \$50.00 filing fee for a total of \$1420.74.

Tenants application #1

Background and Evidence

It is the tenants position that:

- In 2009 his rent was \$425.00 per month.
- The landlord illegally raised the rent to \$800.00 per month for the months of July 2009 and August 2009.
- He has therefore been overcharged rent by \$375.00 for each of those months for a total of \$750.00

The tenant is therefore requesting an order that the landlord reimburse this \$750.00.

It is the landlord's position that:

- Rent in 2009 was not \$425.00 per month; it was \$800.00 per month.
- The rent was reduced to \$425.00 per month for all but the months of July 2009 and August 2009.

- There was no illegal rent increase, and in fact there was a voluntary rent reduction by the landlord for the majority of the year.

Both the landlord and the tenant agree there is no written tenancy agreement in place.

Analysis

It is my decision that the landlord has not shown that the rent for this rental unit is \$800.00 per month. In the landlords own Notice of Rent Increase for Manufactured Home Site, which raises the rent on January 1, 2010, it states that the current rent is \$425.00 monthly. The landlord has also used \$425.00 as the current rent to calculate the rent increase upon.

It is therefore my finding that rent for this rental unit is \$425.00 per month and by collecting has \$800.00 per month for the months of July 2009 and August 2009, the landlord overcharged the tenant by a total of \$750.00

I therefore find in favour of the tenant in his claim for a return of \$750.00.

Tenants application #2

Background and Evidence

The tenant went away for a period of time, and while he was away his travel trailer was broken into, and a large amount of money and belongings were stolen.

It is the tenants position that:

- The landlord should be held responsible for the losses because the landlord was given a key to the tenant's trailer to hold while he was away.
- The landlord must not have taken proper care to ensure that the key was secure, as it is his belief that the key may have been used in the break-in.

- The key that was given to him when he returned was not the key for his rental unit.

It is the landlord's position that:

- They should not be held liable for the losses that resulted from the break-in as there is no evidence that there was any negligence on the part of the landlords.
- They kept the key that was given to them in the office in a secure place, and the office is always locked when there is no one in it.
- The key that was given to the tenant on his return was the same key that he gave to them.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

The tenant claims that the key he gave to the landlord is not the same one that was returned to him however he has supplied no evidence in support of this claim.

Further even if the key that was returned to him is not the same key that he gave to the landlords, there is no evidence to show that the key he gave to the landlord, was used in the break-in of his travel trailer or that the break-in to his travel trailer was a result of any negligence on the part of the landlords.

It is my decision therefore that I will not allow the tenants claim against the landlords for \$5,596.34 in compensation for losses he suffered during the break-in.



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Conclusion

Landlords claim

I have issued an Order of Possession to the landlord for 12 noon on February 15, 2009.

I have allowed the landlords full reduced monetary claim of \$1420.74.

Tenants claim #1

I have allowed the tenants full claim of \$750.00.

Tenants claim #2

The tenants claim for \$5,596.34 is dismissed without leave to reapply.

I have set off the \$750.00 from the tenant's claim #1 against the \$1420.74 from the landlords claim, and have issued an order for the tenant to pay \$670.74 to the landlord.

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: February 05, 2010.

Dispute Resolution Officer