



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation under the Act or tenancy agreement.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the monetary compensation sought?

Background and Evidence

The Tenant submits that three years ago the Landlord named in his Application restricted the heat in the rental unit to 69 degrees Fahrenheit, without the Tenant's consent. The Tenant claims this is in violation of a "tacit contract" when he moved in three years prior. The Tenant has claimed \$16,955.00 for return of four months of rent per year for the past three years.

The Tenant provided evidence, in the form of an email, he sent to the Landlord on December 4, 2009, requesting that the furnace/thermostat be reset immediately so he could get a, "reasonable amount of heat" in the unit.

The Landlord testified he had sold the property to another party in October of 2009. The Tenant did not dispute the property had been sold in October of 2009.

The Landlord further testified that the Tenant often had his windows open and this is why he restricted the heat to 69 Fahrenheit. He testified he had spoken to the Tenant many times about having the windows open before he set it at 69 degrees.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, **I find that the Tenant's claim must be dismissed.**

When making a claim for damages under a tenancy agreement or the *Act*, the Applicant (here the Tenant) has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed, and proof that the party took all reasonable measures to mitigate their loss.

I find that the Tenant has insufficient evidence to prove he suffered any losses due to the limitation in heat in the rental unit. The Tenant did not provide any evidence of what the temperatures actually were in the rental unit due to the restriction to 69 degrees. He also did not provide any evidence of what the temperature requirements are set at by the municipality where the rental unit is located. He further testified he does keep his windows open because he has allergies.

I also note the Tenant waited three years to notify the Landlord in writing that he allegedly required more heat. Even if the Tenant had proven he suffered a loss (which I find he did not), I find that he failed to mitigate his losses by notifying the Landlord sooner of this issue.

Most importantly, he did not notify this Landlord in writing that he wanted more heat in the unit until December of 2009, and at this time the Landlord named in his Application no longer owned the rental unit.

Therefore, I dismiss the Application of the Tenant without leave to reapply.

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: June 28, 2010.

Dispute Resolution Officer