



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on May 03, 2010. The landlords' agent confirmed receipt of these documents.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for compensation for damage or loss under the *Act*?

Background and Evidence

Both Parties agree that this tenancy started on January 01, 2009. Rent for this unit was \$900.00 per month which included utilities and was due on the first of each month. The tenant lived at the property with his girlfriend and on occasion his son. The tenant claims his tenancy ended on January 14, 2010 although he moved from the rental unit on October 22, 2009. The landlord claims the tenancy ended on September 01, 2009 after the tenants had given verbal Notice to end the tenancy on that date and failed to pay any rent after this date. The tenant claims this

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was a month to month tenancy the landlord claims it was a fixed term tenancy. No written tenancy agreement is in place and all agreements were verbal.

Both Parties also agree that when the tenants moved into the rental unit construction was still going on. An agreement was reached that the tenants would move into the property at a monthly rent of \$900.00 and do some of the repairs and the landlords would provided the materials for this work. The landlord agreed to waive the rent for July and August 2009.

The tenant states that the landlord stopped providing the materials for the work they were completing in July, 2009. The tenant states that they decided to give the landlord Notice to vacate the property for September 01, 2009 and this was given verbally to the landlords' agent. The tenant testifies that they had trouble finding another rental unit and attempted to contact the landlord to extend the tenancy and renegotiate the rent. The tenant states he did not pay rent after September, 2009 and the landlord did not pursue him for unpaid rent.

The landlords agent testifies that he still thought the tenants were moving out on September 01, 2009 and when he went to the rental unit he found they had not moved out and had failed to pay rent for September, 2009 on the day it was due. The landlord states he was not obligated to enter into negotiations with the tenants as they had given notice to the landlord to end the tenancy for September 01, 2009, if they wanted to stay all they had to do was pay the rent on September 01, 2009 and the tenancy would have been reinstated. The landlord states they stopped supplying building materials to the tenants after they had given Notice to end the tenancy.

The tenant testifies that there was another suite attached to the property which they also rented from the landlord for business purposes. The tenant states his son lived in the basement portion of this unit for about three months.

The landlord testifies that the tenants were given permission to use this separate unit as a separate business arrangement and for business purposes and storage only. This was provided rent free to the tenants and the arrangement ended at the end of July, 2009.

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The tenant testifies that on September 02, 2009 he received a Notice on the door from the utility company as a service reminder which stated that the previous occupant has requested termination of electrical service at the premises. It also stated that the electricity has been left on temporarily and the tenants should make an application for services within 48 hours or the service may be disconnected. The tenant states he did not make an application for services and the power was shut off on October 22, 2009. The tenant states that the landlord should not have withdrawn this service as it was included in his rent and he knew they continued to live at the property.

The tenant states his girlfriend moved out on September 05, 2009 and he moved out after the power was finally shut off in October, 2009; however, he states he still stored some of his belongings at the property. The tenant claims he had to pay rent on the other unit his girlfriend lived in and on storage facilities for their belongings. He also claims they had to stop doing business in the adjoining unit because they had no power. The tenant claims that on December 21, 2009 a pipe froze in the basement and caused a flood. He claims that this flood caused damage to his stored property namely an industrial scale at an estimated cost of \$550.00, a pro-mixing board at a cost of \$1,718.54 and two CDJ 1000MK11 professional CD units at a cost of \$2,526.72. These items with the exception of the scale were used in his business. The tenant also states clothing and personal items were damaged but he has not filed an application for these. The tenant has attempted to increase the monetary value of his claim but failed to file an amended application. The tenant states he did not hold either business or personal contents insurance.

The landlord testifies that he received a message from the tenant concerning a flood and he immediately went to the property and turned off the water value. He organised a man to come and pump out the basement. The landlord claims that when he entered the basement he did not see the tenant's equipment he claimed was damaged in the vicinity of the flood water. He did find some clothing which he hung to dry and some old furniture. The landlord questions why the tenant still had expensive belongings in the basement when he had moved out and for a property for which he had not paid rent for three months.

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The tenant argues that he continued to keep the minimal belongings at the rental unit for living purposes and continued to store some of his belongings there as his rented storage space was full.

The landlord argues that the tenants did not pay rent and therefore utilities and that is why he requested the utility company to discontinue the utilities in his name. The landlord claims he has now lost eight months of rent for these units and he should not be held responsible for a tenants belonging after a tenant has moved out and failed to pay his rent.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. First of all it is my decision that I will not deal with the tenants' application concerning the business rental. The tenant argues that this falls under the *Residential Tenancy Act* as his son lived there for a few months, however I decline jurisdiction in this matter as this portion of the verbal rental agreement was clearly for business use and the tenant agreed that he did conduct his business on the premises and has provided no evidence to support his claim that his son lived there for a short period. Therefore, I find any equipment stored in the property in connection with the tenants business would not fall under my jurisdiction either.

Therefore I will deal only with the tenants' monetary claim for damage to a Hobart Scale, as this item does not appear to have been used in connection to the tenants business.

The tenant agrees that he did give the landlord notice to end the tenancy and also agrees that he did not move out on September 01, 2009 as the day agreed to end the tenancy. The tenant argues that they had changed their minds about moving out on September 01, 2009 and needed more time to find alternative accommodation; however they were not able to contact the landlord to renegotiate their rent. The landlord agrees that the tenants did talk to him towards the end of August, 2009 about not being able to find alternative accommodation and he would have let them remain at the rental unit if they had paid the rent as agreed of \$900.00.

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It is therefore my decision that when a tenant gives notice to end a tenancy to a landlord unless the landlord agrees that the tenancy may continue then the tenants must vacate a rental unit on the date they gave to end the tenancy. In this case the tenants did not move out and failed to pay the landlord any more rent. If the tenants had paid rent and this rent had been accepted by the landlord this would have reinstated the tenancy.

The tenant argues that the landlord disconnected the utilities and this caused the rental unit to flood. It is my decision that the landlord was not receiving rent and in affect the tenants were overholding at the rental unit after the date to end tenancy came into effect. As part of the tenants rent included utilities the landlord was within his rights to have the utilities taken out of his name. The tenants were informed of this action by the utility company who gave them 48 hours to put the utilities into their name. The power was not disconnected until October 22, 2009 which gave the tenants amply time to put the utilities into their name. Instead the tenant claims he had to move out as he had no power after it was disconnected. Therefore, I find the tenants had moved out of the rental unit before the flood occurred. A tenant cannot use a rental unit as storage or keep minimal belongings there when they have given notice to end the tenancy and when they have not paid rent on the unit after this Notice was due to take effect.

I further find the tenants belongings were not insured and the tenants put their own belongings at risk and did nothing to mitigate their loss in this matter, Consequently, I find the tenants application for a Monetary Order for money owed or compensation for damage or loss is dismissed without leave to reapply.

As the tenant has been unsuccessful with his claim I find he must also bear the cost of filing his own application.

Conclusion

I have declined jurisdiction in part for the tenants claim for a Monetary Order for compensation for his business equipment pursuant to section 4 (d) of the *Act* which states:

the *Act* does not apply to living accommodation included with premises that



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- i) are primarily occupied for business purposes, and
- ii) are rented under a single agreement

The remainder of the tenants' application which was dealt with under the *Act* is dismissed 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: September 13, 2010.

Dispute Resolution Officer