



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, her witness, and the landlord.

The parties had two separate disputes, after the end of the tenancy, that were heard by two separate Dispute Resolution Officers (DRO's). One hearing dealt with cross applications. The other hearing dealt with the landlord's application.

In the first hearing, the landlord sought an order of possession but as the tenant had moved out by the time of the hearing he withdrew his application. The tenant sought to cancel a 1 Month Notice to End Tenancy for Cause; reduced rent; to change the locks; and for compensation relating to a mouse infestation problem. She also withdrew her application to cancel the notice.

The matter of the tenant's claim for compensation relating to a mouse infestation was heard and in the decision dated August 3, 2010 from that hearing the DRO found that the tenant had failed to establish a lack of care on the part of the landlord and her claim for compensation was dismissed.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

In this application, the tenant claimed \$5,799.91 plus taxes for damages resulting from the mouse infestation. As this matter was dealt with in the decision of August 3, 2010, I declined to hear testimony on this part of the tenant's claim as I find the matter is res judicata, and as such dismiss this portion of the tenant's application.

In the second dispute the landlord claimed, among other things, \$1,300.00 in unpaid rent. Two hearings were conducted (October 28 and November 29, 2010) and the DRO conducting those hearings granted this amount to the landlord in his decision of November 29, 2010.

The tenant sought to amend the application to include \$649.95 for a per diem return of rent because she vacated the rental unit and was not allowed back into the rental unit after July 17, 2010. Without objection from the landlord I accept this amendment to the tenant's Application to include the claim for the return of some rent for July 2010.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of some rent; for compensation for loss or damage resulting from a violation of the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 46, 47, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in November 2009 with a monthly rent of \$1,300.00 due on the 1st of each month and a security deposit was paid. The tenancy ended when the tenant vacated the rental unit in July 2010.

The parties agree the landlord issued a 1 Month Notice to End Tenancy for Cause in June 2010 and a 10 Day Notice to End Tenancy for Unpaid Rent in July 2010. The tenant had originally filed an Application for Dispute Resolution seeking to cancel the 1 Month Notice but vacated the rental unit prior to the hearing on August 3, 2010.

The tenant claims the following losses:

Description	Amount
Items removed from property	\$2,099.95
Moving costs – truck rental/gas	\$180.00
Moving costs – food/drinks for movers	\$150.00
Mailing courier costs (lawyer's invoice totalling \$66.83)	\$133.66
Utility moving & set up	\$35.00
Return of partial rent for July 2010	\$649.95
Total	\$3,248.56

The tenant testified that she is seeking compensation for items left outside of the rental unit but on the residential property including a backyard "park" bench; a wheelbarrow; a children's picnic table; a wheeled latch tote; and a desk. The tenant also states that she will, at a later date, make a claim for items left inside the house, including a glass and metal table; television set; and office materials.

The tenant's claim for the 5 items named does not include confirmation of any expenditure or estimates, except for the wheelbarrow is estimated at \$149.99 and a desk at \$314.39.

The tenant and her witness provided testimony regarding the tenant's attempts to remove items from the rental unit. The tenant testified that she moved out on July 17, 2010 but that she had not finished moving everything and that she had planned to come back when she could borrow a truck to pick up the remaining items.

They both testified that the articles mentioned above were either near the driveway or on the verandah and that even though they checked regularly that when they checked approximately a week after she moved out they were no longer there.

The landlord testified that he found out that the tenant had moved out on July 22, 2010 when he looked at the property and found many items, including children's toys and a swing set removed. He also states that he looked in the window of the house and found nothing of the tenants left behind. The only items the landlord states he saw in the yard was an old wheelbarrow; some broken press board and a bundle of cardboard.

The tenant seeks compensation for service of hearing notices and evidence including repeated service because she claims the landlord continually refused to accept his mail and our couriered items. The tenant submitted a bill dated November 25, 2010 from legal counsel in the amount of \$66.83 for courier and postage.

The tenant provided no testimony or evidence as to why she felt the landlord she compensate her for her moving costs or utility moving and setup.

Analysis

In relation to the tenant's application to recover a partial amount of July 2010 rent, I find that the matter of rent for the month of July 2011 was dealt with in the decision of November 29, 2010 and is therefore res judicata. I dismiss this portion of the tenant's application.

In order to be successful in a claim for compensation for damages or loss the applicant must provide sufficient evidence to establish the following four criteria:

1. That a loss or damage exists;
2. That the loss or damage results from a violation or breach of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss;
4. The steps taken by the claimant to mitigate any losses.

As the tenant moved out of the rental unit without any notice to the landlord and because the tenant did not follow through with her dispute to cancel the 1 Month Notice to End Tenancy for Cause or even file an Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent, I find that the tenant had accepted the end of the tenancy based on either one or both of the two notices.

As the tenant, by inference, has accepted the landlord had cause to end the tenancy both under Section 47 (1 Month Notice) and Section 46 (10 Day Notice) and in the absence of any evidence or testimony regarding why she believes she is entitled to have the landlord pay for her moving, I dismiss this portion of her application.

In relation to the tenant's claim for compensation for repeated service of hearing documents and evidence, there are no provisions under the *Act* or regulation to provide compensation to parties for the costs associated with the presentation of their dispute, other than for the applicant to claim recovery of the filing fee. As such, I dismiss this portion of the tenant's application.

And finally, as to the tenant's claim for lost possessions that had been left outside, as the tenancy had ended and the tenant was required to vacate the residential property I find that the landlord was not responsible to contact the tenant or to safeguard the items left behind. I find that when leaving items without any method of securing them outside on a property it is possible that any number of people could have come by and taken these items.

I also note that the tenant failed to provide sufficient evidence to establish the value of the lost items as she is claiming nearly \$2,100.00 and provided estimates totalling approximately \$450.00.

In addition, as the tenant was vacating the rental unit as a result of the issuance of both notices to end tenancy it was her responsibility under Section 37 of the *Act* to vacate the residential property in accordance with those notices.

The effective vacancy date on the 10 Day Notice to End Tenancy that was issued on July 2, 2010 would have been no later than July 15, 2010 and as such the tenant should have removed **ALL** items prior to this date, inside and out of the rental unit.

Conclusion

Based on the above, I dismiss the tenant's application in its entirety.

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 17, 2011.

Residential Tenancy Branch