



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed his claim requesting monetary compensation for losses under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlords filed their claim seeking monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

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.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlords?

Are the Landlords entitled to monetary compensation from the Tenant?

Background and Evidence

These parties were involved in two prior Dispute Resolution proceedings. In July of 2008, the Tenant successfully disputed a two month Notice to End Tenancy, in the first matter.

In September of 2008, in the second matter, the Landlords obtained an order of possession to be effective at 1:00 p.m. on September 30, 2008, based on a two month

Notice to End Tenancy for the Landlords' use of the rental unit. The Tenant applied for a Review of this Decision and this application was dismissed.

The Landlords obtained an order from the Supreme Court of British Columbia for a Writ of Possession on October 3, 2008. The Landlords had to engage the services of a bailiff to enforce the Writ of Possession. On October 7, 2008, the Bailiff went to the rental unit and had the Tenant vacate the rental unit.

In the Tenant's current Application, filed September 30, 2010, the Tenant is alleging that the Landlords misrepresented their intentions to the Tenant and the Tenant has suffered mental anguish and emotional stress as a result. The Tenant requests a monetary order of \$5,000.00. Also included in his submissions is a request for the return of his \$300.00 security deposit.

The parties agree there was no written tenancy agreement and that the tenancy agreement was verbal.

The Tenant claims he was misinformed by the Landlords that the tenancy would be long term. The Tenant claims that the advertising of the rental unit was misleading, as the Tenant expected a long term tenancy. The Tenant further testified that the rental unit had a faulty stove and ceiling light, and that the tap dripped.

The Tenant alleges the Landlords lied to him regarding the length of the tenancy. The Tenant further alleges the Landlords have lied about their claims against him.

The Landlords replied that this was a month to month tenancy, with a verbal tenancy agreement. They were surprised when they were served with the Tenant's claim, some two years after the tenancy ended. They had not heard from the Tenant over the past two years. They had not received the Tenant's forwarding address in writing until they were served with his Application, two years after the tenancy ended.

The Landlords testified that they continue to use the rental unit themselves. They were concerned during the tenancy as the Tenant had a lot of boxes piled up at the rental unit, and they allege this might have been a fire hazard. The Landlords also testified that the requested repairs to the rental unit were always done promptly.

The Landlords testified that the Tenant left the rental unit very dirty and they spent a week cleaning up after he vacated.

The Landlords provided evidence, in the form of a receipt and a letter, that the Bailiff cost them \$1,466.75, to have the Tenant removed from the rental unit. They feel the claims of the Tenant are frivolous and that they have suffered stress due to the actions of the Tenant.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I dismiss the Application of the Tenant.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations 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.

In this case, I find the Tenant lacked sufficient evidence, such as a medical report or other evidence, to prove he suffered any stress or anxiety. Furthermore, I do not find the Tenant proved that the Landlords breached the Act or tenancy agreement. Based on the evidence and testimony of the Tenant, I am unable to find the Landlords did not act in accordance with the Act or the verbal tenancy agreement.

I note that if the Tenant was seeking a long term tenancy, he should have sought out a rental unit offering a written, term tenancy agreement. In this case, the Tenant had insufficient evidence to prove there was any oral agreement for a long term tenancy. He did not provide any evidence, such as advertising, that this was represented to him to be a long term tenancy.

I do not find that the Landlords made any misrepresentations to the Tenant on any of the material terms of the tenancy. While there may have been minor inconsistencies on dates and a few other matters in the Landlords' evidence, these were insignificant and irrelevant to the material matters at issue. I find that the Tenant lacked sufficient to show these minor inconsistencies proved the Landlords lied or were otherwise misleading in their actions.

I also find that the Tenant extinguished his right to the return of the security deposit, pursuant to section 39 of the Act, since the Tenant did not provide his forwarding

address in writing to the Landlords within one year after the end of the tenancy. Under this section the Landlords may keep the security deposit and any interest.

As to the claims of the Landlords, I find they lacked sufficient evidence, such as photographs or invoices, to prove the rental unit was left dirty by the Tenant.

However, I do find that the Landlords have proven that they suffered a loss of \$1,466.75, as a result of the Tenant failing to comply with the order of possession and by breaching the Act by not vacating the rental unit when he was required to do so. I dismiss the other claims of the Landlords as they had insufficient proof of these.

I find that the loss to the Landlords was verified as claimed in the letter and invoice from the Bailiff. I also find the Tenant failed to prove that the Landlords did not take all reasonable measures to mitigate their loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, pursuant to section 67, I find that the Landlords have established a total monetary claim of **\$1,516.75**, comprised of \$1,466.75 for the Bailiff fees and the \$50.00 fee paid by the Landlords for this application. I grant and issue the Landlords a monetary order against the Tenant in this amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 02, 2011.

Residential Tenancy Branch