



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OPT

Introduction

Some 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.

Issue(s) to be Decided

This is a request for an Order of Possession and a request for a Monetary Order for \$3476.07. The applicant is also requesting recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- On June 11, 2011 he paid the security deposit and the first month's rent to the landlord and was told that he could move into the rental unit on June 28, 2011 even though the tenancy did not technically start until July 1, 2011.
- The landlords previous tenant did not move out by June 28, and therefore the landlord told him he was not able to move-in yet.
- Therefore on June 29 he moved the majority of his belongings into storage because the rental unit was still not available.

- On June 30 the landlord still allowed him to have the utilities hooked up for the rental unit, and therefore he assumed that he would be getting possession of the rental unit soon.
- On June 30 he went to the rental unit looking for the landlord and found the cleaning lady in the rental unit who told him of the rental unit would not be ready until the following week.
- He spoke later with the landlord and the landlord told him the unit would not be ready until the 15th.
- The landlord later told him he would no longer rent the unit to him.

Therefore since the landlord breached the tenancy agreement and caused him significant losses is requesting a claim as follows:

Two months storage costs	\$306.88
Groceries lost as a result of being unable to move into the rental unit	\$444.19
Estimated costs of lost condiments	\$150.00
Estimated cost of lost frozen goods	\$250.00
Transfer of gas utility and gas costs (estimate only)	\$105.00
Transfer for phone utility X 2 (estimate only)	\$110.00
Transfer of cable and Internet service X 2 (estimate only)	\$110.00
Compensation for stress	\$2000.00
Filing fee	\$50.00
Total	\$3526.07

The landlord testified that:

- The previous tenant gave him notice that he would be vacating the rental unit at the end of June 2011, and in fact stated that he would be out earlier than the end of the month.
- The previous tenant had always been a good tenant and he had never had any issues with the tenant whatsoever, and therefore had no reason to doubt the previous tenant's word.
- He did enter into a tenancy agreement with the applicant and originally had told the applicant he could moving early on June 28, 2011 because at that time he fully expected that the previous tenant would have vacated by that date.
- Towards the end of the month it became apparent that the previous tenant was not making any effort whatsoever to vacate, and since he legally had possession of the rental unit to the end of June 2011 he had to inform the applicant that he would not be able to move in early, and he informed the applicant he would apply for an Order of Possession to get the previous tenant out but it's unlikely that he would not get possession of the rental unit before July 15, 2011.
- The applicant was understandably upset however he felt he had done everything he could to try and resolve the issue.
- Since he had not heard from the previous tenant for quite some time, he entered the rental unit on June 30, 2011 and made the determination that the rental unit had been abandoned, although there were still many items belonging to the previous tenant in the rental unit.
- He therefore moved all the previous she tenants' items into storage and made arrangements to clean, repair, and paint the rental unit.
- He had a cleaning lady in the rental unit on June 30 when the applicant showed up at the rental unit, and when the cleaning lady informed him that the rental unit would not be ready until probably the following Monday or Tuesday, he became verbally abusive to the cleaning lady and it scared her so much that she decided she wanted to go home as she did not feel safe. (See written statement from cleaning lady).

- The tenant later spoke with him and again when he was informed that the rental unit was not yet ready and may not be ready for some time, he again became very aggressive and verbally abusive towards me.
- Because of this aggressive abusive behaviour I made the decision that I would no longer accept the applicant as a tenant in my building.

The respondent therefore believes that since the original delay was beyond his control, and since the reason he decided not to allow the tenant to move into the rental unit is because the tenant became abusive, this application should be dismissed

Analysis

It is my decision that I will allow a small portion of this claim.

The landlord entered into an agreement with the applicant to rent the rental unit to him, and since it was not available for the tenant to move-in at the beginning tenancy date, the landlord is liable for reasonable losses suffered by the tenant, even if there was no negligence on the part of the landlord.

That being said is my decision that I am only going to allow the tenants claim for storage in the amount of \$306.88, , and groceries in the amount of \$444.19. It is my finding that the tenant has not met the burden of proving the remainder of his claims.

The tenant claims to have lost a large amount of condiments, and frozen meat and vegetables, however he has supplied no actual list of items lost, or the value of those items.

I also deny the tenants claims for utility costs, because the tenant has supplied no evidence in support of these claims other than to state that he has been told this is what the costs will be.

It is also my decision that I will not allow the claim for stress and anxiety, because although I can understand that the situation would be stressful it is my decision that the tenant's abusive behaviour towards the cleaning lady and the landlord exacerbated the problem and made a difficult situation much more stressful.

Had the applicant not acted in such an abusive fashion this tenancy may have gone forward, although it's very unlikely it would have started on July 1, 2011.

Conclusion

I have allowed \$751.07 of the tenant's application and I also order recovery of the \$50.00 filing fee. I have therefore issued a monetary order in the amount of \$801.07.

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: July 19, 2011.

Residential Tenancy Branch