



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement.

The landlord did not appear at the hearing. The tenant testified that he served the Application and Hearing Package upon the landlord via personal delivery on April 14, 2011.

Having been satisfied the tenant served the landlord in a manner that complies with section 89 of the Residential Tenancy Act (the "Act"), I proceeded to hear from the tenant without the landlord present.

The tenant appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenant to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this month to month tenancy started on November 15, 2010, and ended on April 15, 2011, that monthly rent was \$525.00 and that he has not paid a security deposit.

According to the tenant, there is no written tenancy agreement.

The tenant's claim is for \$1,125.00, which is the equivalent of rent for one month in the amount of \$525.00, based upon his assertion that the landlord, on March 10, 2011, informed him in a handwritten note to move out. Additionally the tenant is claiming for \$125.00 for moving costs and \$500.00 for illegal entry of the rental unit.

The tenant stated that he vacated the rental unit on April 15, 2011, as a result of receiving the handwritten note, which he submitted entitled him to receive compensation

equal to one month's rent. I note that the tenant stated he did not pay rent for April 2011.

The tenant submitted that the landlord's intention in giving him the note was to sell the premises.

The tenant submitted that during a time he was away, the landlord entered his rental unit and turned down the thermostat to 55, which was an illegal entry. The tenant claims this entitles him to \$500.00.

The tenant stated that his actual moving costs were \$539.00, which totalled four trips and a lunch.

The tenant provided no evidence of actual costs.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenants in this case, have 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.

Section 51 of the Act provides as follows:

(1) A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I therefore find that the tenant is not entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement as he had not received a Notice to End the Tenancy compliant with Section 49 of the Act. I find the landlord's handwritten note is not in the approved form.

Nonetheless, the tenant withheld rent for the last month of the tenancy, which effectively gave him the one month's rent equivalent.

I therefore find that the tenant is not entitled to compensation of one month's rent and **dismiss** his claim for \$525.00.

I find the tenant has submitted insufficient evidence that the landlord entered his rental unit and **dismiss** his claim for \$500.00.

As to the tenant's claim for moving expenses, these are choices the tenant made, both in entering into a tenancy and ending a tenancy, on how to facilitate his moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

I therefore dismiss the tenant's claim for \$125.00.

As I have dismissed each portion of the tenant's claim, **I dismiss the tenant's application, without leave to reapply.**

Conclusion

The tenant's application 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: August 11, 2011.

Residential Tenancy Branch