



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary Order for compensation for damage or loss in the sum of \$8,422.00.

The tenant gave evidence that he served the landlord with his application and notice of this hearing on January 12, 2012 by leaving the materials with Chief William Rabang. Based on the tenant's evidence I am satisfied that the landlord had notice of this hearing however the landlord did not appear to present evidence.

The tenant gave testimony under oath.

Issue(s) to be Decided

Has the tenant met the burden of proving he is entitled to the monetary award sought?

Background and Evidence

The tenant testified that this tenancy began in July 2007 and he vacated the rental unit on October 24, 2009 when he was incarcerated. The tenant later submitted however that he considers the tenancy to have ended on January 10, 2012. The tenant submitted that this was a subsidized tenancy with his portion of the rent being \$400.00 paid for by CMHC. The tenant submitted a "Supporter Aged Detail as at 12/08/2011" showing invoiced amounts and payments made and showing that the last payment of \$400.00 was made on December 2, 2009. The tenant submitted another report showing his name and entitled Social Development Report – Payment History Report – Skyway First Nations" the report states "Use this report to see what was spent during any given month on any client". The report lists the tenant as a vendor and payments being made such as "One Part", "Fuel: Rent – CMHC being made.

The tenant submitted that the rental unit was an unfinished 3 bedroom split level home with 1.5 baths, a kitchen and a basement. The tenant states that the landlord never

completed construction of the home. The tenant says he lived in the rental unit with his wife and children however once his wife and children vacated the residence the Chief and Council wrote to him on November 17, 2007 advising that his tenancy would not be allowed if his wife and children had moved out and that the rental payments had been made on his behalf up to the end of November 30, 2007. The tenant submitted a copy of the letter. The tenant testified that he had hoped that the band would finish the home as a duplex so he could continue to reside in the home however the Band did not complete construction on the home. The tenant says that the Band also moved other people into the home. The tenant is seeking compensation because he says part of the rental unit was unusable and he says he is seeking compensation for "...over paid rent due to added tenants and damage to my personal property".

The tenant submitted an Inspection Report prepared by Health Canada Environmental Service prepared on December 17, 2009 indicating that the house was in derelict condition with missing windows and doors and that there was an infestation of rodents. The tenant submitted correspondence sent to him on January 5, 2010 by the Band indicating that the Band had taking possession of the unit and his goods had been placed in storage. The tenant also submitted a letter sent signed by "Roselda Bello" issued by the Shxw̓ha:y Village Council allowing her 24 hours to access the rental unit to remove the tenant's personal belongings otherwise "...all items will be thrown in the garbage." On January 10, 2010 the Chief and Council wrote to the tenant advising him that him that the tenancy was to be terminated immediately due to the house being empty, the doors kicked in and left wide open and an infestation of rodents.

Analysis

The tenant stated that he vacated the rental unit on October 24, 2009 when he was incarcerated. If the tenancy ended in 2009 the time limit for making a claim with respect to this tenancy has expired. However, the tenant also submits that this tenancy didn't end until January 10, 2010. He has submitted a report showing that a payment of \$400.00 was last made on December 2, 2009. In another report which the user is instructed to "Use this report to see what was spent during any given month on any client" shows that on January 1, 2010 a "WOP/ASARET-ONE PARENT" payment of \$375.58 was made as well as a payment of \$400.00 for W/A Rent from CMHC, Fuel of \$100.00 and WOP/AARET-ONE PARENT" of \$80.00. It is not clear whether the tenant made these payments or these payments were made on his behalf. Accepting the instruction to "Use this report to see what was spent during any given month on any client" I find it is more probable that the tenant did not make any of these payments himself and that these payments were made on his behalf. If I accept that this evidence

shows that this tenancy continued up to January 10, 2010 then the application filed on January 5, 2012 would be within the time limits.

Accepting that payments outlined above were being made on behalf of this tenant with respect to this tenancy up to January 10, 2010 I find that this claim has been filed within the proper time limits. However, except for his own testimony which I found to be inconsistent, the tenant has submitted insufficient evidence to substantiate a claim for compensation. He has failed to show that he paid any sum of rent which should be reimbursed to him. Further, while the tenant submits that he lived in the rental unit from July 2007 to January 10, 2010 there has been no evidence to show that he took steps to mitigate his losses and compel the landlord to make repairs. This even though he has submitted a report by Health Canada made in 2009 which shows that the rental unit was in very poor condition. Further, some of the evidence the tenant has submitted indicates that it was the tenant himself who was responsible for the condition of the rental unit. For these reasons I find that the tenant has failed in his burden of proving this claim and it is therefore dismissed.

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: March 01, 2012.

Residential Tenancy Branch