



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of his security deposit, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?

Background and Evidence

The parties entered into a verbal tenancy agreement that began on approximately January 15, 2011 and ended at the end of June 2012 when the Tenant vacated the basement suite. Rent was payable on the first of each month in the amount of \$450.00 and on January 15, 2011 the Tenant paid \$225.00 as the security deposit.

The Tenant confirmed that he sent the Landlord photographs as evidence however he could not remember if he gave him copies of the letters he submitted to the *Residential Tenancy Branch*. The Landlord confirmed receiving photographs and hearing documents from the Tenant however he denied receiving copies of the two letters.

The Tenant had initially sought compensation equal to two month's rent (2x\$450.00) plus the return of his security deposit. He has since received the full deposit back of \$225.00 so he is reducing his claim to \$900.00.

The Tenant advised he was asked to move by the Landlord's Father because the unit needed major repairs. He said his rental unit was damaged on June 23, 2012, when the toilet overflowed and the carpet in his bedroom had to be removed. He said he was faced with having to live with a concrete floor in his bedroom and a toilet that would run constantly so he felt he needed to act quickly to find a new place. He was concerned that he did not have a written notice to move and he did not have references so he typed up two letters, one was a notice to vacate and the other was references and he asked the Landlord's wife to sign them.

The Landlord confirmed that his father, who lives in the upstairs suite, requested the Tenant move out of the unit so they could complete the repairs. He argued that his father asked the Tenant to find a new place in a month and that they did not ask the Tenant to vacate immediately. He confirmed the repairs were completed July 1, 2012.

The Landlord argued that he has never seen a copy of the letters written by the Tenant that were signed by his wife. He said they never demanded that the Tenant move out right away, rather they requested the Tenant stay with friends for a few days until the new carpet could be installed. Then he found out the Tenant vacated the unit, without notice, and without returning the keys to the Landlord.

The Tenant confirmed he vacated the unit by June 29, 2012, because the toilet had not been repaired and the carpet was not reinstalled within that week. He said he felt he needed to find a livable place as soon as possible. The Tenant stated that he did not come to dispute resolution to request to have the repairs completed in a timely manner instead of moving, because he did not know that was an option.

Analysis

The Tenant was not able to confirm that he served the Landlord with copies of the letters he included in his evidence provided to the *Residential Tenancy Branch*. Not serving evidence on the respondent is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not received copies of the Tenant's letters provided in evidence to the *Residential Tenancy Branch*, I find they cannot be considered in my decision. I did however consider the Tenant's testimony.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 52 of the Act stipulates that in order to be effective, a notice to end a tenancy must be in writing and when given by a landlord **must** be in the approved form [emphasis added].

In this case the Tenant states he was issued a verbal notice to end tenancy however the Landlord claims the Tenant was told to find a place to live for a short time while they conducted the repairs. The Tenant typed up a letter stating he was required to move out by August 1, 2012, and he requested the Landlord's wife sign it.

Based on the aforementioned, I find the Tenant was never issued a 2 Month Notice to end tenancy for landlord's use of the property as notice was not issued on the prescribed form as required by Section 52 of the Act. Therefore the Tenant is not entitled to compensation for being issued a notice to end tenancy as provided under section 51 of *Act*.

Furthermore, there is no evidence before me to support the Tenant took steps to mitigate his loss by seeking a remedy to have the Landlord complete the repairs in a reasonable amount of time. Instead, the evidence supports the Tenant made a conscious decision to vacate the property within a week of the flood, without providing notice to the Landlord of his intention to do so. Accordingly, I dismiss the Tenant's claim.

The Tenant has not been successful with his application; therefore he must bear the burden of the cost to file his application.

Conclusion

The Tenant's claim is HEREBY 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: September 26, 2012.

Residential Tenancy Branch