



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, CNR, MNDC, MNR, OPR, OPL, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, an Order of possession based upon unpaid rent and landlord's use of the property and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a Notice to end tenancy for unpaid rent and landlord's use, a monetary order for damage or loss under the Act and to recover the filing fee costs from the landlord.

The tenant provided affirmed testimony that on October 16, 2012; copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord's residential address; via registered mail. The mail was not returned

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

The tenant said he did not receive Notice of the landlord's application. Therefore, in the absence of the landlord and based upon the tenant's testimony that he was not served with Notice of the landlord's application, I find that the landlord's application is dismissed with leave to reapply.

Preliminary Matters

The tenants vacated the rental unit at the end of October 2012; the tenant confirmed that the landlord has legal possession of the rental unit. Therefore, the portion of the application requesting cancellation of notices to end tenancy was withdrawn.

The tenant he stated that an evidence package had been submitted with the application; however no evidence was before me. I checked the Residential Tenancy Branch (RTB) file site, which did not indicate an evidence submission. I then reviewed the file notes, which indicated that at the time the application was made the tenant was told to submit to the landlord and RTB copies of the Notices to end tenancy; pictures, hydro bills and

police reports. As the tenant said he had submitted documents with his application and the notes indicated he had not; I determined that the hearing would proceed based on the tenant's oral submissions.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$22,020.00 for damage or loss under the Act.

Background and Evidence

The tenancy commenced in 1998, rent was \$1,350.00 and increased to \$1,800.00 by the end of the tenancy. The tenants vacated the 2 acre property at the end of October, 2012. The tenants signed a tenancy agreement.

The tenants made the following claim for compensation:

60 months loss @ \$300.00 per month for boat storage	\$18,000.00
Less amount paid by landlord	\$3,180.00
TOTAL CLAIM	\$20,020.00

The tenant said that in 2008 the landlord moved a forty-eight foot boat onto the property and stored it there, without the tenant's permission.

In June 2009 the landlord moved a trailer onto the tenant's property, allowed people to live in the trailer and to use the hydro services.

The tenant did not submit a claim for orders or compensation any earlier in the tenancy as he wished to remain on the property. If the tenant had made a claim he believes the landlord would have forced him off of the property.

Analysis

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.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement *must do whatever is reasonable to minimize the damage or loss.*

(Emphasis added)

In the absence of any evidence of a loss that supports the claim made by the tenants and, in the absence of evidence that the tenants made any effort to minimize the loss they are now claiming, I find that the application is dismissed.

I have rejected the tenant's submission that an attempt to remedy the problem earlier in the tenancy would have resulted in eviction; a landlord may only evict a tenant in accordance with the Act. There is no ability for a landlord to end a tenancy if a tenant happens to submit an application seeking dispute resolution.

I find, pursuant to section 44(f) of the Act, that the tenancy ended effective October 31, 2012, when the tenants vacated the rental unit. This decision is based on the tenant's testimony that they have vacated the rental unit.

Conclusion

The tenant's claim is dismissed.

The landlord's claim is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 09, 2012.

Residential Tenancy Branch