



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a Notice to End Tenancy issued for alleged cause and to recover the filing fee for the Application.

On January 17, 2013, the Tenant amended his Application to include a monetary claim for the return of the security deposit, the costs of vacating the rental unit and for wage loss for filing his Application.

The Tenant and two Advocates representing him appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

One of the Landlords appeared late at the hearing. The Application of the Tenant had been dismissed by the time the Landlord appeared.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the outset of the hearing the Tenant testified he had vacated the rental unit. Therefore, the issue of cancelling the one month Notice to End Tenancy for alleged cause is dismissed and I have not considered the merits of the Notice to End Tenancy.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant testified that he did not want to stay in the rental unit and that is why he moved out.

The Tenant alleged the Landlord intimidated him with the Notice to End Tenancy and he requests a monetary order for a day of lost wages to deal with the Application and for the cost of moving.

Analysis

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

When a party, such as the Tenant here, makes an application for monetary compensation against another party (here the Landlord), the Tenant has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, the Tenant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

In this instance, I find the Tenant has failed to prove that the Landlord breached the *Act*. The Landlord has a lawful right to provide a Notice to End Tenancy to the Tenant, and the Tenant has no evidence that the Landlord issued the Notice in bad faith. Rather than continue to dispute the Notice, the Tenant moved on his own accord.

I find the Tenant has failed to prove the Landlord breached the Act or tenancy agreement, and I dismiss these monetary claims without leave to reapply.

I also note that at the end of the hearing the Landlord appeared. She requested that the Tenant provide her with the forwarding address to send the security deposit to.

The Tenant provided the forwarding address to the Landlord and it was explained to the Landlord that she had 15 days to either return the security deposit or to file an Application to keep all or a portion of the security deposit, pursuant to section 38 of the Act. The Landlord was cautioned to follow the provisions of the Act regarding the security deposit.

Conclusion

The Tenant vacated the rental unit because he did not want to stay in the rental unit any longer. Therefore, the request to cancel the Notice to End Tenancy was dismissed without reviewing the merits of the Notice.

The Tenant failed to prove the Landlord breached the Act and the Tenant's claims for monetary compensation for moving and lost wages are dismissed without leave to reapply.

The Landlord has the Tenant's forwarding address to return the security deposit to and was cautioned to follow the Act in dealing with the deposit.

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: January 25, 2013

Residential Tenancy Branch