



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement.

A Hearing was held on January 8, 2013 to hear this matter and a decision was issued on January 21, 2013 and amended on January 29, 2013. The decision dismissed the Tenant's application on jurisdictional grounds as the Arbitrator found the Respondent was not a Landlord, but a tenant subletting rooms.

Further the Tenant filed a review consideration application on February 18, 2013 and was successful in the review consideration decision dated February 21, 2013 as the Arbitrator found that the Tenant had established grounds to show the decision may have been issued on fraudulent information given by the Landlord. Consequently a new Hearing was scheduled for March 19, 2013.

The Tenant said the Residential Tenancy Branch served both himself and the Landlord with the Application and Notice of Hearing (the "hearing package") by mail. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to monetary compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on June 1, 2012 as a fixed term tenancy with an expiry date of September 30, 2012. Rent was \$400.00 per month payable in advance of the 1st day of each month. The Tenant and the Landlord had an agreement that the Tenant would sell the Landlord a car for \$2,500.00 of which the Landlord paid \$1,000.00 and then the

balance of the purchase price \$1,500.00 would be paid as rent for the months of July, August and September, 2012. The Landlord said the Tenant was to move out at the end of September, 2012, but the Tenant did not vacate the unit. The Tenant said they had a tenancy agreement and it was extended on a month to month basis after September, 2012. The Tenant said he paid rent of \$400.00 per month for October, November, December, and January, but the Landlord did not cash his January, 2013 cheque. The Landlord said the Tenant was not a Tenant and she was not a Landlord. The Landlord said the Tenant was a guest in her rental unit and the Act does not have jurisdiction over these situations. On questioning the Landlord, the Landlord said she had a written agreement with the original owners of the property that she could sublet rooms in the house. The Landlord said there could be as many as 6 occupants paying rent to her at any one time.

The Tenant said the Landlord represented herself as a Landlord to him and she signed government forms that he gave her as his landlord. The Tenant said the only time the Landlord has said she was not a Landlord is when he filing his application.

The Landlord said that the new owners of the rental unit evicted her on February 28, 2013 as they stated that they were not prepared to continue the agreement she had with the previous owner of the property.

The Tenant continued to say that he was unjustly evicted on January 30, 2013 by the Police as they said he was not a tenant and he was trespassing. The Tenant said he believes the Landlord started harassing him after his accident on October 29, 2012, because she wanted to evict him. The Tenant said as a result of the accident and the Landlord harassing him he has made the following application. The Tenant said he is claiming \$2,500.00 for pain and suffering and \$1,000.00 for lost wages both as a result of his accident. The Tenant continued to say the accident happened on the deck of the rental unit on the night of October 29, 2012. The Tenant was helping another tenant get into the rental unit on a rainy night when the Tenant slipped and fell on the deck. The Tenant said he experienced a concussion and as a result was instructed by the Health Authority to rest for the next few months. A copy of the Health Authority letter is in the Tenant's evidence package. The Tenant said the Landlord did not maintain the deck to a safe standard allowing algae to grow on it therefore the Tenant believes the Landlord is responsible for his fall. Consequently the Tenant said he was unable to work so he is claiming loss wages of \$1,000.00 and the Tenant said because of his pain and suffering he believes the Landlord should pay him \$2,500.00.

The Landlord said the Tenant had not worked the entire time he was in the rental unit and he was not working at the time of the accident so she cannot understand that the Tenant loss any wages. The Tenant said he was not working, but he had a job opportunity. As well the Landlord said it was raining for a week prior to the accident so the deck was wet and slippery because of the rain not because of the condition of the deck. It should be noted neither the Landlord nor the Tenant provided any evidence as to the condition of the deck. The Tenant did provide a statement by another tenant who

said that the deck was slippery, but the statement does not say why the deck was slippery because of rain or if the deck was in good or poor repair.

In closing the Landlord said she does not agree that she is a Landlord and that the RTB has jurisdiction over this situation as she was a tenant renting out rooms to guests. As well the Landlord said the Tenant did not loss any wages and the Tenant has not proven the deck was not maintained to an acceptable standard.

The Tenant said in closing that the Landlord represented herself as a landlord and signed as his landlord and they had a verbal tenancy agreement for 4 months which renewed on a month to month basis in October, 2012. As well the Tenant said the deck was not maintained to a safe standard and when he slipped and fell the Landlord should be held responsible. The Tenant said the Landlord has done this to many other tenants and he believes the Landlord should be held responsible.

Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only resolve disputes that are within the jurisdiction created by the statute.

Section 2 states that the Act applies to all tenancy agreements.

“Landlord” is defined as:

- the owner of the rental unit;
- the owner’s agent;
- a person acting on behalf of the owner;
- a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement.

The Respondent/ Landlord was renting the whole house from the owners of the property and the Respondent/Landlord said she had a written agreement with the owners to sublet the rooms in the house to other tenants. Consequently, I find that the Respondent/ Landlord was acting as an agent of the owners as the Landlord was “entitled to possession of the rental unit and to exercise any of the rights of a landlord under a tenancy agreement.” As a result I find the Respondent/Landlord is a Landlord and a tenancy agreement did exist between the Tenant and the Landlord and the Residential Tenancy Branch does have jurisdiction in this situation.

Based on the affirmed testimony and submitted evidence of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities, the testimony and the evidence submitted. The applicant 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 actual value of the loss must be proven and verified.
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 a damage/loss and that it stemmed directly from a violation of the Act, regulation or tenancy agreement. The Tenant has not provided any corroborating evidence that the state of repair of the deck and not the rainy weather conditions caused his accident; therefore the Tenant has not met the burden of proof that the Landlord's action caused his accident by not maintain the deck. The Tenant has not proved the Landlord was responsible for his accident and the loss or damage that he is claiming. Consequently I dismiss the Tenant application and claims for lost wages of \$1,000.00 and his claim for pain and suffering in the amount of \$2,500.00 due to lack of evidence.

Conclusion

I dismiss the Tenant's application due to insufficient evidence to prove the condition of the deck and the Landlord's lack of maintenance caused his accident. 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: March 19, 2013

Residential Tenancy Branch