



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and damages; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- c) To order return of the tenant's personal property; and
- d) To compensate the tenant for the loss of his property and lost income.

SERVICE:

Both parties attended and the tenant agreed he received landlord's Application for Dispute Resolution by registered mail and the landlord agreed he received personally the tenant's Application. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Have I jurisdiction pursuant to section 4 of the Act to hear this matter? If so, has the landlord proved on the balance of probabilities that the tenant owes rent and did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that the landlord is illegally retaining his property, the cost of the property retained and the loss of income resulting from this?

Background and Evidence:

Both parties attended and were given brief opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant rented a cabin for \$450 a month from the landlord as part of his legal medical grow-op where he intended to grow medical marijuana for himself and others. The landlord had two other buildings described as a coop and a barn which he offered to rent as well for a total of \$1,000 a month.

The tenant said the cabin was not habitable but was part of his business and the landlord confirmed that it was part of the three stage operation in which he invested \$9,000 himself. The landlord is claiming \$20,963.07 for damages resulting from the grow-op and the tenant is counter claiming \$7,500 for equipment that he says is still in the cabin to which the landlord has denied him access. He says that he has lost income also because he has been deprived of his tools.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Jurisdiction:

I find I have no jurisdiction under the Act to decide this matter. Section 4(d) specifically states that the Act does not apply to premises that are primarily occupied for business purposes. I find the weight of the evidence is that these premises were primarily occupied for business purposes as they were all part of the medical marijuana grow op and were rented for that purpose.

Conclusion:

I dismiss the Applications of both landlord and tenant without leave to reapply as I find I have no jurisdiction in this matter.

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: August 27, 2013

Residential Tenancy Branch