



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MDNC, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution by the applicant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and recover the filing fee for this application. The onus rests with the applicant to prove their claim.

The applicant clarified they are family members of the tenant, now deceased, but did not provide evidence they represent the estate of the deceased tenant. None the less the applicant was permitted to voice their claim. The applicant clarified they reside in an adjacent Province.

Both parties appeared at the teleconference hearing and provided testimony and were provided opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. The hearing did not have benefit of document evidence from the applicant. The landlord testified they received the applicant's Notice of Hearing but no other document evidence. The applicant confirmed receiving the evidence of the landlord also provided to this hearing.

Issue(s) to be Decided

Is the Applicant entitled to the monetary amount claimed?

Background and Evidence

The parties agreed the Tenant of this matter occupied the rental unit since June 1, 2001 and passing away in February 2013. Subsequently, the applicant attempted to vacate, and clean the tenant's rental unit of belongings, but claims they were refused to do so by the landlord. The applicant claims they expended funds for travel, lodging, meals, childcare and suffered a loss of wages, on certain assurance from the landlord they would be permitted to attend to the rental unit, but that the landlord would not allow them to deal with the tenant's belongings and affairs of the rental unit. The parties acknowledge that on arrival the applicant and another family member became involved

in a dispute in respect to authority to deal with the tenant's affairs, which lingers to this day. The landlord received legal advice in respect to the dispute as it was not clear to the landlord whom was entitled to claim the tenant's belongings. The parties acknowledge that communication between respective lawyers purportedly laid the ground for the landlord to be indemnified by the family members, but the landlord claims that such proof of indemnification was not provided by the family applicants; therefore they could not allow the applicants to claim the tenant's belongings. As a result, the landlord placed the tenant's belongings in storage where they remain subject to the estate or other authorized entity taking possession of them. The applicant claims their costs for travel, lodging, meals, childcare and loss of wages, which they claim were, "spent in waste".

Analysis

In the absence of any evidence from the applicant that they represent *the estate of the deceased tenant*, I find the applicant has failed to establish they are a valid party of this proceeding as prescribed by the definition of *Tenant*, in the Definitions portion of the Act. None the less, I further find that I prefer the evidence of the landlord that as it was not clear whom was entitled to claim the belongings and affairs of the tenant and that it was reasonable for the landlord to decline access to the tenant's belongings by the applicant. The applicant has not met the onus to prove their claim and the claim must fail. Accordingly I **dismiss** the applicant's claim in its entirety.

Conclusion

The application **is dismissed**, without leave to reapply.

This Decision is final and binding on both parties.

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 30, 2013