



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR & FF

Introduction

A hearing was conducted by conference call in the presence of the Tenant and in the absence of the Landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlord on September 19, 2013. The landlord failed to serve the tenant with a copy of the Application for Dispute Resolution/Notice for Hearing filed by the landlord.

The Notice of Hearing attached to the Application for Dispute Resolution filed by the Tenant set the time of hearing for 9:00 a.m. The Notice of Hearing attached to the Application for Dispute Resolution filed by the landlord set the time of hearing for 9:30 a.m. The landlord did not appear at scheduled time set for the Tenant's hearing. I was concerned there might have been some confusion and I ordered that the hearing be adjourned to 9:30 a.m. The landlord did not appear at the 9:30 time period and I proceeded in the absence of the landlord.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?
- c. Whether the Tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenancy began on March 14, 2013. The rent was \$650 per month payable on the first day of each month. The tenant testified he paid a security deposit of \$200 at the start of the tenancy.

The tenant testified that he was threatened by a third party and the police were called. On or about September 9, 2013 he returned home and he discovered that his window had been broken. He immediately advised the landlord who told him she would repair the window. The landlord delayed in making he repairs. On September 14, 2013 he returned to his residence and discovered that someone had broken in and stolen many of his belongings. He testified that it appears the third party gained access to his residence through the broken window that the landlord failed to repair.

The landlord was advised. She changed the locks and would not allow him access. He testified that on or about October 7, 2013 he returned to the rental property and picked up belongings that that landlord had retrieved from his rental unit and stored. He further testified that his claim in these proceedings is for belongings that were not the belongings he received from the landlord on October 7, 2013. In addition the tenant testified the landlord shut off his power on 4 occasions. The tenant submits the landlord is at fault for failing to repair the window in a timely manner.

Analysis

Landlord's Application:

The landlord did not appear at the hearing. The tenant testified the landlord failed to serve a copy of the Application for Dispute Resolution on the Tenant. As a result I ordered that the application filed by the landlord be dismissed with liberty to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

Tenant's Application:

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1320 for belongings that were stolen. The landlord failed to attend the hearing. The landlord submitted a summary of events which is at odds with the tenant. That summary was not under oath. Further, she submitted an inventory of belongings that were taken from the tenant's rental unit and were made available for pick up by the tenant.

I determined in the absence of evidence from the landlord that the landlord was negligent in failing to repair the window that was broken by a third party and this allowed someone to break into the tenant's rental unit and steal his property. Little weight can be given to the landlord's summary as it was not under oath and the landlord did not make herself available for questioning.

Prior to the hearing the landlord produced an inventory of goods that were taken from the tenant's room and were available for pick up by the tenant. The tenant did not receive a copy of the inventory as he has not provided the landlord with a forwarding address. The tenant testified the goods he is claiming are different than the goods in that inventory. The tenant was asked to particularize his claim. Some of the goods it was claiming for are goods identified in inventory.

The tenant failed to produce evidence relating to the value of the goods lost. He testified that any receipts that he held were taken with his belongings. The tenant acknowledged that many of his claims were the purchase cost of the good in question. I determined the tenant is entitled to the depreciated value of the goods stolen. With respect to each of the tenant's claims I find as follows:

- a. The tenant claimed the sum of \$400 for loss of clothes including jeans, shirts, socks, jackets, caps etc. While some of these goods are identified in the inventory I determined the tenant is entitled to \$200 of this claim.
- b. The tenant testified stereo equipment was taken that cost \$200 in 2010. He testified the replacement value would be approximately \$100. I determined

the tenant is entitled to \$100 of this claim. The tenant denied that the 2 speakers in the inventory are the stereo equipment that were stolen.

- c. I determined the tenant is entitled to \$25 for the cost of a DVD player. The tenant denies that the DVD player the landlord had is the working DVD player that was stolen.
- d. I determined the tenant is entitled to \$100 for the depreciated value of a mountain bike that had been purchased in 2009. The bikes in the inventory are not the mountain bike that was stolen.
- e. The tenant testified he lost \$100 in food that was stolen and \$160 in food from a freezer. The tenant is entitled to \$100 for these two claims.
- f. I determined the tenant is entitled to \$50 for miscellaneous tools.
- g. I dismissed the claim of \$50 for pots, pans, plates, bowls, and cutlery as I determined these belongings were part of the goods retrieved by the landlord and were available for the tenant to pick up.
- h. I dismissed the claim of \$60 for bedding, sheets, blankets and towels as I determined these belongings were part of the goods retrieved by the landlord and were available for the tenant to pick up.
- i. I dismissed the tenant's claim for compensation for loss of power as the tenant failed to present sufficient evidence to establish how he was adversely affected by the loss of power or that the landlord had intentionally cut the power.

In summary I ordered the landlord pay to the tenant the sum of \$575.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: October 21, 2013

Residential Tenancy Branch

