



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MDNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the filing fee.

Both parties appeared at the teleconference hearing and provided testimony. The landlord was represented by their agent.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. The only document evidence provided by the parties was a copy of the relevant Notice to End.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

This tenancy has ended. During the tenancy the payable monthly rent was \$500.00. The parties agreed the tenant received a 1 Month Notice to End Tenancy for Cause dated August 05, 2013. The hearing had benefit of a copy of the Notice to End. The effective date of the Notice is written as September 05, 2013. The parties agree that the tenant told the landlord they would act on the landlord's Notice and were vacating September 30, 2013 and therefore the tenant did not dispute the landlord's Notice to End. The parties further agree that on September 06, 2013 the landlord asked the tenant to move out of the rental unit. The tenant said he would vacate sooner than

month's end if they were provided compensation for alternate accommodations to month's end. The landlord called Police to confirm they were permitted to oust the tenant according to the Notice to End and testified Police confirmed same. The parties agree that on the following day - September 07, 2013 - the landlord removed items from the tenant's rental unit and placed them outside of the rental unit in the driveway area. The landlord claims that only removed a desk, a box full of items, a light and a lamp; while the tenant claims that the landlord removed *all* of their personal belongings outside, including their bed, and all kitchen items and personal belongings. The Police were again called to keep the peace. As a result, the tenant was left to collect their belongings and with the aid of a rented truck placed all their belongings in storage and found accommodations to the end of the month at \$70.00 per day. The tenant seeks compensation of truck rental \$41.00, storage costs \$120.00, labour to move: 2 hours labour, and \$1680.00 representing hotel charges to end of September.

The landlord disputes the tenant's claims that the landlord removed all of the tenant's items – only removing a portion of them onto the driveway, but never the less out of the rental unit with a view of ousting the tenant from that day onward. The landlord offered the attending Police Officer, E.T., as a witness to the amount of belongings the landlord actually removed from the rental unit on September 07, 2013 – and provided their phone number and the ancillary Police file number. The responsible Police Detachment was called as per the landlord's testimony, but the Police Officer was not available to provide witness input into this hearing.

Analysis

I have carefully considered all the aforementioned evidence provided.

It must be noted that when a party – in this case the tenant - makes application for dispute resolution the onus lies on that party to prove their case. Where one party provides a version of events in one way and the other party provides an equally probable version of events without further evidence, under most circumstances, the party with the burden of proof has not fully met the onus to prove their claim and on this basis the claim will likely fail as they have not sufficiently proven their claim.

In this case, the tenant has the burden to prove they suffered a loss as a result of the landlord's conduct or neglect in contravention of the Act. On preponderance of the testimonial evidence it is clear the landlord acted to oust the tenant before they were legally able to do so. In the least the landlord acted to end the tenancy well before the effective date of the Notice to End. **Section 47(2)(b)** prescribes that the effective date of the Notice was to be the last day of the month following the month in which the landlord gives the tenant the Notice to End. In different wording, *since the landlord*

gave the tenant the Notice to End in the month of August 2013, the legal effective date off the Notice would be September 30, 2013. It may be that the Police provided approval of the landlord's actions; however, the landlord was not in a legal position to remove the tenant's belongings on September 07, 2013 in a bid to oust the tenant. On this basis I find the landlord contravened the Act and I accept the tenant's testimony they incurred certain costs as a result of the landlord's breach. I find the landlord responsible for certain costs of the tenant.

In respect to the tenant's monetary claim, I find the tenant has not provided the required receipts to effectively support the monetary claim. It was available to the tenant to provide the relevant receipts to prove the extent of their claim, but they did not. None the less, I accept the testimony of both parties sufficiently proves the unfolding of events for September 07, 2013 and I find the tenant's claims for moving, storage and labour as reasonable representations for such claims. In addition, I find the tenant's claim for alternate accommodations costs to the end of September 2013 are also not extravagant. On a balance of probabilities, I find the tenant has sufficiently proven they suffered a monetary loss as a result of the landlord's conduct. None the less, without actual receipts proving the full extent of their claim, I grant the tenant *nominal compensation*, inclusive of all claims in the limited amounts representing \$175.00 for moving, plus the equivalent of one month's rent of \$500.00 to offset alternate accommodations, and the filing fee of \$50.00 - for a total award of **\$725.00**.

Conclusion

The tenant is being given a Monetary Order for **\$725.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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: December 11, 2013

Residential Tenancy Branch