



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony provided; neither party made any written submission.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$900.00, as the result of a Notice ending tenancy for landlord's use of the property?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed that a tenancy commenced on July 1, 2011. Rent was \$900.00 per month. The tenant paid a security deposit, which was returned.

The tenant said that he vacated the unit at the end of August 2011, as the landlord told him a family member was moving into the unit. The tenant stated he was not given a written notice ending the tenancy, but that he agreed to vacate. Eventually the tenant became aware of his right to receive compensation equivalent to 1 month's rent. The tenant applied for compensation exactly 2 years from August 30, 2011; the date he says the tenancy ended.

The landlord said that the tenant moved into the unit on July 1, 2011 and that by the end of July 2011 he had vacated without notice. The tenant was having problems with a neighbour. The landlord did not issue any notice ending the tenancy and did not tell the tenant he must vacate the unit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 49 of the Act allows a landlord to issue a Notice, in the approved form, directing a tenant to vacate when a close family member will be moving into the rental unit.

Section 51 of the Acts set out the compensation that is due to a tenant when a Notice issued pursuant to section 49 of the Act:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement*

The tenant confirmed that he was not given a Notice ending tenancy and that he was only told he needed to vacate. In the absence of evidence that a Notice ending tenancy was in fact issued, I find, on the balance of probabilities that the tenant has failed to prove he is entitled to compensation in accordance with section 51 of the Act. There was no evidence before me that the tenant had been required to vacate the unit.

Taking into consideration the tenant's acknowledgment that he was not given a Notice; combined with the landlord's affirmed testimony that she did not ask the tenant to vacate, I find, on the balance of probabilities that the tenant has failed to prove his claim. Therefore, I find that the application is dismissed.

Conclusion

The application is dismissed.

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 09, 2013

Residential Tenancy Branch

