



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the cost of moving, for improvements made to the rental unit during the tenancy and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing the tenant withdrew his claim for compensation for the improvements made to the rental unit. Accordingly, this hearing only dealt the tenant's claim for the cost of moving and for the recovery of the filing fee.

A hearing was conducted on September 03, 2013 in response to applications made by both parties. The landlord filed a copy of the decision into evidence.

Issues to be decided

Did the hearing on September 03, 2013 deal with the tenant's claim for moving costs? Is the tenant entitled to the cost of moving and the recovery of the filing fee?

Background and Evidence

The tenancy started on March 01, 2013 and ended on September 20, 2013 pursuant to an order of possession granted to the landlord effective this date.

The tenant is claiming \$950.00 for the cost of moving and has filed a copy of his credit card statement as proof of payment. The tenant's argument is that due to the landlord not accepting his rent cheque for August, he was served with a notice to end tenancy for non payment of rent which lead to the end of tenancy.

The landlord stated that in a letter dated July 26, 2013, the landlord's lawyer contacted the tenant by mail and email and informed him that he was representing the landlord.

The tenant stated that he had not heard from the landlord regarding the appointment of this lawyer to represent her and he was not comfortable dropping off cheques at a “random lawyer”.

The tenant argued that he made three attempts to pay rent and they were all unsuccessful as the agent for the landlord refused to accept them. The agent for the landlord stated that the cheques were dropped off at her place of employment instead of to the lawyer’s office as the tenant was instructed to do so.

The tenant agreed that he usually paid rent by direct deposit into the landlord’s bank account, but just prior to August 01, 2013 he lost the landlord’s bank information. The tenant stated that the agent refused to give him the requested information and therefore he was unable to deposit the rent into the landlord’s bank account. As stated above, despite having the option of sending his rent cheque to the landlord’s lawyer, the tenant chose not to.

The landlord also filed evidence regarding a mediation applied for by the tenant in the Small Claims Court of British Columbia. The session was scheduled for November 21, 2013. The tenant did not attend and the tenant’s claim was dismissed.

Analysis

The tenant relies on the information that his rent cheques were not accepted by the landlord’s agent which led to the end of the tenancy and therefore the landlord must bear the cost of his move. Even though I explained that this matter had already been dealt with in the previous hearing, the tenant argued that despite not having applied for the cost of moving in that application, the Arbitrator chose to address it during the hearing on September 03, 2013. The tenant stated that he did not have an opportunity to file any evidence for this claim because the move had not yet occurred.

In the decision dated September 03, 2013, (Files #811600 and 810618) the Arbitrator states:

I determined the tenant failed to pay the rent when due for the month of August. While the representatives of the landlord were disingenuous when saying they were not acting as agents for the owner, the tenant had an opportunity to pay the rent to the solicitor for the landlord but chose not to do so. Section 26 of the Residential Tenancy Act referred to above provides that a party cannot withhold the rent unless they have obtained an order to do so from an arbitrator except for emergency repairs. The landlord had the right to end the tenancy based on non-payment of rent.

The decision also states

I determined the tenant is not entitled to the cost of moving. The tenancy is coming to an end because of the tenant's failure to pay the rent when due and subsequent agreement to end the tenancy. The Residential Tenancy Act provides that an innocent party has the obligation to mitigate or act reasonably to lessen his loss. If the tenant felt that landlord was responsible to pay his moving cost the appropriate and easiest method would have been to pay the cost of moving himself and then filed an Application for Dispute Resolution claiming against the landlord.

Based on the documentary evidence, testimony of the parties and the decision dated September 03, 2013, I find that the tenant agreed to move out and that the cost of moving was dealt with, during the hearing on September 03, 2013. The Arbitrator found that the tenant had the opportunity to pay rent to the landlord's lawyer and chose not to. The Arbitrator further found that the tenant was not entitled to the cost of moving.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, I must dismiss the tenants' application. The tenant has not proven his case and therefore must bear the cost of filing his application.

Conclusion

The tenant's application is dismissed in its entirety.

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 05, 2013

Residential Tenancy Branch

