



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and a rent reduction, for repairs, services or facilities agreed upon but not provided.

The tenant and one of the landlords attended the conference call hearing and gave sworn testimony. Neither party provided documentary evidence for this hearing and relied on their sworn testimony. The testimony of the parties has been considered in this decision. The tenant had served the landlord with the application and notice of hearing by normal mail. The landlord agrees he did receive these documents. Although this is not considered to be the correct method of service for hearing documents under s. 89 of the *Act*, as the landlord agrees he has received the hearing documents it is my decision that the landlord was served for the purpose of the *Act*.

Preliminary Issues

The tenant was cautioned during the hearing about remarks made and for interruptions during the hearing. Both parties were cautioned about not interrupting each other while they provided testimony.

The landlord testifies that this matter has already been dealt in September 2011 when the Arbitrator then heard three files together under file Numbers, 245764, 245758 and 245779.

I have reviewed the decision rendered at that hearing to determine if this matter is considered Res Judicata. I find the matter of the tenant's complaint that the landlord was stealing electricity was not dealt with and the tenant had not filed an application at those hearings to recover any costs for electrical bill from the landlord. The matter dealt with the tenant's claim to dispute a Two Month Notice to End Tenancy and the tenant offered up this complaint about the landlord allegedly stealing electricity as a possible cause for the Two Month Notice.

Consequently I am prepared to deal with the tenant's application today.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this month to month tenancy started on August 01, 2010. Rent for this unit was \$595.00 per month and was due on the first day of each month.

The tenant agrees that he was evicted from the unit. The tenant testifies that he moved out on November 01, 2011. The landlord testifies that he had an Order of Possession enforced in Supreme Court and the Court Bailiffs evicted the tenant on November 30, 2011.

The tenant testifies that the heating was included in his rent. However, there was a baseboard heater connected to the tenant electrical supply for which the tenant was billed. The tenant testifies that he gave the landlord some bills and the additional costs on his electrical bill averaged out at \$25.00 a month. The tenant had previously asked the landlord to have this baseboard heater wired to the landlords meter but the landlord refused to do this. The tenant testifies that he did not keep providing the landlord with utility bills as the onus is on the landlord to pay the tenant's heating costs.

The tenant testifies that the landlord told the tenant that the landlord had been stealing electricity for 20 years. The tenant seeks to recover cost for these additional utilities of \$250.00. The tenant has not provided copies of the utility bills concerning this matter in evidence.

The tenant also seeks a rent reduction concerning this matter for an undisclosed amount.

The landlord disputes the tenant's claim. The landlord agrees that heat was included in the tenant's rent and had agreed to pay the tenant an amount bi monthly for additional electricity used for the baseboard heater. The tenant only provided a few bills and asked the landlord for an amount around \$6.00 a month. The landlord testifies that he paid the tenant what he asked for each month and does not owe the tenant any further amounts.

The landlord denies stealing electricity at any time and disputes that he told the tenant this.

At the end of the hearing the landlord sought to clarify some issues about the tenant's constant filing of applications against the landlords. The tenant became angry and stated that he was taking this matter to Supreme Court to have the Residential Tenancy legislation charged and stated angrily that the RTB were going to go down hard.

Analysis

I have carefully considered the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant has provided no evidence to show that there is any amount owing to the tenant from the landlord for the additional costs associated with the baseboard heater. The burden of proof falls to the tenant in this matter and as the tenant has provided no corroborating evidence such as electrical bills to support his claim then it comes down to being one persons word against that of the other and therefore the burden of proof is not met.

In the matter of the tenant's claim for a rent reduction for repairs, services or facilities agreed upon but not provided. The tenant has provided no corroborating evidence to

show what repairs were not completed or what services or facilities were not provided. Consequently, without any corroborating evidence I must dismiss the tenant's application in this matter.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 04, 2013

Residential Tenancy Branch

