



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Magus Investment Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss.

The hearing process was explained to the attending parties and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter#1- At the outset of the hearing, the landlord confirmed receiving the tenant's application via personal delivery on November 6, 2013. The tenant supplied no documentary evidence and the landlord submitted one a photograph of the outside premises of the rental unit. The landlord confirmed that he had not sent this photograph to the tenant and I have therefore excluded this evidence, due to the landlord's failure to comply with 4.1 of the Dispute Resolution Rules of Procedure (Rules).

Preliminary matter#2- The landlord introduced a witness, and I instructed the landlord that after the witness was sworn in, the witness should depart the room and area where the landlord was testifying so that the witness could not hear any testimony. The landlord agreed.

When the witness was later called to testify, the landlord immediately began speaking to the witness, which suggested that the witness had been present for the entirety of the hearing.

As I find the witness was not excluded from hearing the parties' earlier testimony, I declined to allow the witness to testify.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The parties were unsure of the start date of the tenancy, but submitted that it was in 2009. The parties agreed that the tenancy ended on November 19, 2011, when a fire caused the rental unit to become uninhabitable.

The tenant's monetary claim is \$8200, comprised of three cars the tenant contended were destroyed by the landlord, which the tenant referred to as "collector's" cars. I note that the tenant listed \$6700 as his monetary claim in his application.

The tenant valued the cars at \$4200 for a '74 VW Beetle, \$2500 for an '89 Isuzu Trooper 4x4, and \$1500 for an '86 Mazda "low rider."

The tenant submitted that a fire in the rental unit forced him to vacate, leaving behind the above listed cars. The tenant submitted that in a previous dispute resolution hearing, the tenant had sought and received "leniency" in removing the cars, as the Residential Tenancy Branch ("RTB") awarded him 30 days to remove the cars.

When the tenant attended the residential property to remove the cars, the cars were gone and the landlord informed him that he had given the cars to a towing company.

In response, the landlord suggested that the cars were not on the rental property, as the tenant had constructed a fence around his portion of the premises and the cars were beyond the fence.

The landlord further submitted that he gave the tenant 30 days to remove the cars, but that he failed to do so. The landlord also submitted that he called the police inquiring as to what he should do with the cars, being informed that he should just "junk" the cars.

The landlord denied receiving any financial gain from the cars.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After the tenant referenced a previous dispute resolution hearing and having relied upon this Decision, I searched the RTB system for a copy of the previous Decision.

A Decision was entered on February 6, 2012, by another Arbitrator, regarding this matter, and I note that this Decision, #775496, dismissed the tenant's application due to his absence from the hearing and made no mention of giving the tenant 30 days to retrieve his personal property. Therefore I determined that the tenant either misinterpreted this Decision or misspoke about the results. At any rate, the Decision did not support the tenant's position.

As to the tenant's monetary claim, I find the tenant failed to meet step 4 of his burden of proof, as required by section 7(2) of the Act in minimizing his loss. In reaching this conclusion, I find the tenant failed to remove his cars in a prompt manner after the tenancy ended and that he left them behind for an indeterminate amount of time.

While I do not accept the landlord's contention that the cars were not on the residential property, from my view of the evidence, the tenant had ample time after the tenancy to retrieve his personal property and failed to do so.

I also considered that the tenant failed to submit any proof of the value of the cars in question.

Conclusion

Due to the above, I find the tenant submitted insufficient evidence to meet his burden of proof in support of his application and I therefore dismiss his application, 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: March 10, 2014

Residential Tenancy Branch

