



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for 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.

The tenant and an agent for the tenant (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant and agent were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on April 8, 2014. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord provided by the landlord in a February 2014 Application for Dispute Resolution which was confirmed during the hearing. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenant testified that the registered mail package was returned as “unclaimed” as of May 1, 2014. I find the landlord was duly served on the fifth day after mailing on April 13, 2014, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

Issue to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The tenant testified that a periodic, month to month verbal tenancy agreement began on October 9, 2013, and ended on January 16, 2014 when the tenant vacated the rental unit. Monthly rent of \$1,700.00 was due on the first day of each month. The tenant paid an \$850.00 security deposit at the start of the tenancy, which the tenant confirmed was subsequently returned by the landlord.

The tenant submitted a copy of the written notice to end tenancy (the "Notice") he served on the landlord dated December 26, 2013. In the tenant's Notice the tenant writes that he will vacate the premises on or before January 31, 2014. The tenant testified that he paid full January 2014 rent in the amount of \$1,700.00 on December 27, 2013. The tenant stated that he is seeking the return of half of January 2014 rent, in the amount of \$850.00, due to the landlord re-renting the rental unit for the remainder of January 2014 after he vacated the rental unit on January 16, 2014.

The tenant referred to a text message submitted in evidence that the tenant testified was from the landlord dated January 29, 2014. In that text message exchange the tenant writes in part:

"...I saw that you had people move into the house a while ago. Ill be expecting some of my rent money back seeing as I paid a full month and you didn't get my consent to let people move in. Thanks
What day did they move in? I know it was over a week ago now..."

[reproduced as written]

The response from the landlord by text according to the tenant which was submitted in evidence, reads in part:

"I don't need your consent you vacated and gave back your keys as well they are not paying any rent..."

[reproduced as written]

The tenant and agent confirmed that they did not have any evidence from the new renters that rent was paid for the month of January 2014 to the landlord. The new renters were also not called as witnesses during the hearing. The agent alleged that intimidation by the landlord was a factor in the tenant obtaining evidence for his application, which was not supported by any documentary evidence, nor was additional testimony to support this allegation by the agent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenancy agreement as defined under the *Act* allows for an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities. As a result, and without any evidence to prove to the contrary, I accept the undisputed testimony of the tenant that an oral tenancy agreement began on October 9, 2013.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

In the matter before me, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable under the *Act* to minimize the damage or losses that were incurred.

The tenant submitted a copy of his written notice to end tenancy (the "Notice") he served on the landlord dated December 26, 2013. In the tenant's Notice the tenant writes that he will vacate the premises on or before January 31, 2014. As a result, I find the landlord had a right under the *Act* to rely on the tenant's written Notice. The tenant confirmed that he vacated the rental unit on January 16, 2014. As a result, I find the tenancy ended on that date, January 16, 2014.

The tenant has claimed for the return of half of January 2014 rent due to the landlord re-renting the rental unit for the remainder of January 2014 after he vacated the rental unit on January 16, 2014. I find the tenant has provided contradictory evidence that the landlord received a rent payment from new renters for the remainder of the month of January 2014 as the text message submitted in evidence indicates the landlord's response in the text that no rent was paid. Based on the above, I find the tenant has not met the burden of proof to prove part one of the four-part test for damages or loss described above. Therefore, **I dismiss** the landlord's application **without leave to reapply**, due to contradictory evidence.

As the tenant's application did not have merit, I do not grant the tenant the recovery of the filing fee.

Conclusion

The tenant's application did not have merit and has been dismissed without leave to reapply, due to contradictory evidence.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 5, 2014

Residential Tenancy Branch

