



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

The tenant no longer lives in the rental unit and on his application for dispute resolution, provided the address of the house next door as his address for service. At the hearing, the landlord advised that he attempted to serve evidence on the tenant at the address for service but was told by the occupant of that residence that he had not given permission for the tenant to use that address. While ordinarily I would not consider evidence which the tenant had not received, in this case, the tenant made it impossible for the landlord to serve evidence on him. I therefore have accepted and considered the evidence of the landlord.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

At the outset of the hearing I confirmed that the tenant's claim is for the value of his belongings which were lost or damaged following his eviction on April 10, 2014. The parties agreed that on that date, a bailiff acting pursuant to a writ of possession issued by the Supreme Court attended at the unit and served the writ on the tenant. The tenant closed the door to the unit and locked himself inside until the police arrived and advised the tenant that the bailiff had a legal right to enter the unit and deliver vacant possession to the landlord.

The landlord testified that on April 2, 2014, 8 days prior to the date the bailiff arrived, the landlord attended at the rental unit and attempted to personally serve on the tenant an order of possession he had obtained at a hearing on March 31, 2014. The landlord

stated that the tenant closed the door and refused to take the order, so the landlord's son videotaped the landlord posting the notice to the door of the unit. The landlord entered into evidence a copy of that video.

The tenant denied having received the order and denied having any interaction with the landlord on April 2.

The tenant testified that on April 10 when the police explained that they would not stop the bailiff from acting on the writ of possession, he left the unit and returned later that evening to find his belongings on the property line. The tenant attempted to hold a garage sale but many of his goods by that point were missing or damaged.

The tenant seeks to recover \$25,000.00 as the value of his belongings.

Analysis

I find on the balance of probabilities that the tenant received the order of possession on or after April 2, 2014. The tenant denied having received the order, but I find the landlord's video evidence to be persuasive and given the tension between the parties, I find it likely that the tenant is not being truthful about the events of April 2.

If the tenant disputed that the landlord had a right to enforce the order of possession, he was obligated to act within 2 days to file a review of the decision granting the order, which would have prevented the bailiff's work. The tenant chose not to file for a review of the order and I find that by the time the bailiff was involved, the only recourse left to the tenant was to apply to the court for a stay pending judicial review of the decision.

The tenant argued that because the landlord hired the bailiff, the landlord should be held responsible for the loss of the tenant's goods. I disagree. The landlord followed the procedure set in place by the court and obtained the writ pursuant to which the bailiff acted. I find that once the bailiff began acting on the writ, the bailiff became responsible for the tenant's belongings.

I find that the tenant does not have a claim against the landlord as the bailiff is the party who removed the tenant's goods. If the tenant believes that the bailiff did not exercise his duties in accordance with his obligation as a court appointee, he may pursue the bailiff in the appropriate forum. The Residential Tenancy Branch is not the appropriate forum for such a claim as the Branch's jurisdiction is restricted to disputes between landlords and tenants.

I dismiss the tenant's claim for want of jurisdiction.

Conclusion

The claim 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: August 11, 2014

Residential Tenancy Branch

