



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order of \$10,000.00 against his former Landlord.

Only the Tenant appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified he served the Landlord with the Notice of Hearing and his Application by putting it in the Landlord's mailbox on May 9, 2014. On June 26, 2014, the Tenant was supplied with a second copy of the Application to serve on the Landlord as he lost his copy and had served the Landlord by putting it in the mailbox. The Tenant was informed that he had to serve the Landlord by registered mail, or in person with a witness. The Tenant had no evidence he served the Landlord in one of these ways after June 26, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

The parties were involved in one prior hearing under a different file number, which is referenced on the front page of this decision. In the prior decision the Tenant was awarded the return of his security deposit.

Issue(s) to be Decided

Has the Landlord been served with the Application properly?

Is the Tenant entitled to a monetary award?

Background and Evidence

The Tenant testified that his tenancy started with the Landlord in or about September of 2011, and was renewed in September of 2012.

The Tenant testified that in or about February of 2013 an incident took place at the rental unit and he was taken into custody by the police and placed into a hospital for observation. According to the Tenant this was for a suicide watch, although he denies he was suicidal.

During this time the Tenant's father went to the rental unit. The Tenant testified that his father told him he had put all his property into storage because the locks had been changed.

The Tenant testified he was out of the hospital less than 24 hours later but he did not return to the rental unit. He testified that he was arrested and incarcerated two or three days after getting out of the hospital.

The Tenant testified that his father told him he had been evicted. According to the Tenant's testimony, the Landlord informed the Tenant's father that if the Tenant returned to the rental unit she would call the police.

The Tenant testified that his father moved the Tenant's belongings into a storage locker type of facility. The Tenant testified he lost all of the property in storage as he was unable to pay the storage fee for the locker.

The Tenant testified that his father paid the Landlord for damages the Tenant caused to the rental unit.

The Tenant then testified he did not suffer any lost rent as he did not pay the Landlord rent of \$750.00 for February of 2013, because his money was in his storage locker.

The Tenant submits he was illegally evicted and the Landlord should compensate him \$10,000.00 for his losses.

The Tenant claims the Landlord is responsible for his loss of his property from the storage locker.

Analysis

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 all of 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 acted reasonably to minimize the damage or loss.

In this instance, 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 acted reasonably to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities I find that the Tenant's claims must be dismissed without leave to reapply, for the following reasons.

I find the Tenant failed to serve the Landlord with the Notice of Hearing or the Application in accordance with the *Act*. The Tenant is unable to serve the Landlord with these by putting them in a mailbox, pursuant to section 89 of the *Act*. I find the Tenant did not serve the Landlord properly.

I further find the Tenant has failed to prove his claim, based on the merits of his claim.

While the Landlord may not have ended the tenancy in accordance with the *Act*, I find the Tenant has failed to prove that this alleged violation caused him to incur any losses.

In any event, I find there is insufficient evidence from the Tenant that his father was not acting on his behalf or in his interest when he was dealing with the Landlord.

Furthermore, I do not find it is the Landlord's responsibility to compensate the Tenant for his loss of property from a storage locker when it was the Tenant's father who placed the Tenant's property into a storage locker, not the Landlord.

Once the Tenant's parent took the property from the Landlord, the Landlord was no longer responsible for this property, in this particular instance.

Furthermore, according to the Tenant's own testimony, he had not paid the Landlord the February rent as that money was in his storage locker. This is an apparent contradiction in the Tenant's testimony, since he could have paid the storage fee with this money rather than losing his property. I find this contradiction tends to weaken the Tenant's evidence of the circumstances that took place here.

For all of the above reasons, I dismiss the Tenant's claims without leave to reapply.

Conclusion

I find the Tenant failed to serve the Landlord in accordance with the Act. I further find the Tenant has failed to prove his claims against the Landlord have merit, nor has he shown he suffered any loss due to the alleged illegal eviction.

The Tenant's claims are dismissed without leave to reapply.

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 Act.

Dated: September 22, 2014

Residential Tenancy Branch

