



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for damage or loss and for return of all or part of the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

The tenant seeks an adjournment of the hearing as he is not ready to proceed. The landlord disputes this stating that the application was filed on May 30, 2014 and the tenant has had approximately 4 months to prepare and that evidence is not submitted as per the Rules of Procedure. The tenant states that he is missing some of his documents for the hearing and that he is currently still waiting for delivery of those missing documents. The tenant states that he was advised by Residential Tenancy Branch Staff that he could request his documents 3 weeks before the hearing time and that would be sufficient time. The tenant has not provided any documentary evidence. I find that tenant has had ample time to file any documentary evidence, for which he has failed to provide any. The tenant's request to adjourn the hearing is denied as this would be highly prejudicial to the landlord who has attended in response.

The landlord's counsel, K.S. states that an evidence package was sent to the Residential Tenancy Branch, but that it was not sent to the tenant. The tenant has confirmed that no documentary evidence has been received from the landlords. The evidence submitted by the tenants, W.H. and D.S. is excluded for lack of service to the tenant. The landlord, L.G. states that she sent her evidence package by Canada Post Registered Mail on September 12, 2014 to the landlord's agents and the tenant on the same date. The landlord, L.G. has provided the Canada Post Registered Mail Customer Receipt Tracking numbers for both packages. Csl. K.S. has confirmed receipt of the landlord, L.G.'s documentary evidence. The tenant strongly disputes that

he did not receive the evidence package. The landlord, L.G. states that it was sent to the address provided for service on the tenant's application for dispute. A search of the Canada Post website shows that the package was received on September 12, 2014 and an attempted service was made and a notice left at the tenant's listed mailing address. The notation shows that the package was not picked up and returned to the sender. The tenant states that he no longer lives at that address. When clarified the tenant stated that he had provided a new mailing address to the Residential Tenancy Branch, but not to the landlord/respondents. A search of the physical file and the online data base shows no notice of a changed address, nor did the tenant provide service of a new mailing address to the landlords. As such, I find that the landlord, L.G. has properly served the tenant with her documentary evidence. The tenant is deemed to have received the package 5 days after September 12, 2014 as per the Act. The hearing proceeded with only the landlord, L.G.'s documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant seeks a monetary claim of \$11,000.00 as he was experiencing mold problems and boulders falling on the rental property causing a safety issue. He was ordered to vacate by the District Authority. The tenant states that the landlord had a bobcat moving gravel around that caused the boulder and safety issues that frustrated the tenancy. The tenant provided verbal details of a monetary claim in which he seeks \$2,900.00 for towing, \$1,200.00 for gas, \$169.00 for permits, \$740.00 labour to move, \$300.00 for a trailer rental and \$490.00 to rent a generator as power was turned off at the rental property as compensation for being forced off the rental property due to the actions of the landlord.

The landlord agrees that the tenancy was frustrated, but that the landlord had no control or part in causing it. The landlord refers to a letter dated May 8, 2012 from the City of Williams Lake which is captioned, "Evacuation of 1703 Hazel Street..." The letter orders that the landlord obtain a Geotechnical Engineers report for the stability of the bank. The landlord states that a letter dated May 23, 2014 was received that ordered the revocation of occupancy until a licensed Geotechnical Engineers report could be provided to show the stability of the bank. A report was made dated June 19, 2012

Analysis

I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to satisfy me that the landlord was responsible for causing the safety issue requiring the City of Williams lake to cancel the occupancy permit of rental property. The tenant has not provided any evidence of negligence. As well, the tenant has failed to provide any invoices/receipts for any costs being sought. The tenant's application for a monetary order is dismissed.

Conclusion

The tenant's application 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: October 02, 2014

Residential Tenancy Branch

