



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding McLaren Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This is an application filed by the tenant for a monetary order and an order for the landlord to comply with the Act, Regulations or Tenancy Agreement.

Both parties attended the hearing by conference call and gave testimony. The tenant has not submitted any documentary evidence, but has confirmed receipt of the landlord's submitted documentary evidence. I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

At the beginning of the hearing the tenant clarified that he was not seeking an order for the landlord to comply with the Act and that this selection was made in error.

At the end of the hearing the tenant provided a new mailing address as he is no longer a tenant of the landlord. As such, this file shall be updated to reflect the tenant's new mailing address.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenants written details state,

"On June 28/2014 staff let a past guest into my suite and helped her pack suitcase (3) with my belongings and my grocery money and helped her move these suitcases out of my unit without any regard to my lease agreement and the law."

The tenant stated in his direct testimony that he was seeking a monetary order for \$1,800.00 which consisted of \$159.99 for a purple jacket, \$159.99 for a pink jacket, \$119.99 costume jewellery, \$248.00 for 2 pairs of boots, \$99.00 for costume jewellery, 3 sets of wigs for \$79.00, \$89.00 and \$89.00. The tenant also seeks \$180.00 in cash and

the cost of 2 suitcases for \$127.00 and \$89.00. The tenant states that the landlord allowed access to a third party into his rental without his permission and that the third party committed theft and removed his personal property. Prior to the hearing, the tenant failed to provide any of these details in his application or to the landlord.

The landlord clarified that staff were responding to a police order to open the rental for the tenant's guest to retrieve her personal belongings. The landlord has submitted a copy of an Incident Report which states a past guest named, E.K.,

"E came to the building and ask if we were able to retrieve her bank card. We told he we are unable to go into the unit. When asked why S was unable to help (and know that S was in the building) she said S was in Surrey sleeping (E was texting S cellphone, his "friend" was replying). We encouraged her to cancel her debit card and seek other options. She stressed the idea that without her stuff, she would have to sleep on the street. E decided to call Non-Emergency Police because she claimed she had been robbed by 801. While coming back into the building, S snuck out of the building unnoticed. #609 later told E that he saw S leaving. VPD came to Howe St. and went up with E and A to retrieve E's belongings. At the request of the VPD, A opened up unit 801. Once in the suite VOD confirmed belonging to E by checking ID, Bank Cards and medications with guest's information on it, as well as matched descriptions of belonging given by victim to VPD before entry. VPD assisted with the retrieval of the belongings."

The tenant stated that he tried to file a complaint with the Vancouver Police, but was informed that the matter was determined not to be a theft, but was as stated by the landlord the Police's assistance in retrieving personal belongings for E.

The landlord stated that Police Constable #2879 directed staff to open unit #801 to allow police into the unit who would supervise the removal of property belonging to E. The landlord has provided Police File No. 14-109472 and is awaiting a copy of the file. The landlord has not yet received a copy as of the date of this hearing.

The tenant states that he has the receipts and evidence to show that he did own these items, but was not able to submit them. The tenant states that he was evicted in December 2014 and has been unable retrieve any of his personal belongings from the landlord as he was informed that all of his belongings were thrown in the trash.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that I cannot accept the tenant's claim that a theft took place. As the tenant has stated in his own direct testimony, the complaint of theft was reported to the police and it was determined by the police to not be a theft, but a retrieval of a third party's personal belongings. The tenant has also not been able to prove that the claimed items were his property or provide proof of an actual amount required for compensation as he has not provided any supporting evidence that would show the value of the items being claimed. The landlord has disputed this claim providing an incident report and documentation that personal property was returned to the rightful owner by the police and not the landlord.

On a balance of probabilities I find that the tenant has failed to provide sufficient evidence that a loss occurred. The tenant's monetary claim 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: January 22, 2015

Residential Tenancy Branch

