



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein he sought a Monetary Order for the sum of \$1,280.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, return of double the security deposit and to recover the filing fee.

The Landlords appeared at the hearing as did G.A., the Tenant's father who also appeared as agent for the Tenant. G.A. advised that the Tenant was incarcerated at the time of the hearing. I asked G.A. if he was able to present the Tenant's case, or if he wished to request an adjournment. G.A. stated that he was prepared to proceed and did not want the matter adjourned to permit the Tenant an opportunity to appear.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Issues to be Decided

1. Is the Tenant entitled to receive double the security deposit?
2. Is the Tenant entitled to monetary compensation from the Landlord?

3. Should the Tenant receive the fee he paid to file his application?

Background and Evidence

G.A. testified that the tenancy began in 2007. Monthly rent was payable in the amount of \$800.00 and the Tenant paid a security deposit of \$400.00.

G.A. stated that the tenancy ended on August 20 or 23, 2014.

Introduced in evidence was a letter, dated August 23, 2014, in which the Tenant provided his forwarding address to the Landlord. A person with the initials S.C. signed the letter as witness and wrote that it was delivered on the same date to the Landlord, A. [presumably A.M.]. G.A. confirmed that S.C. was the girlfriend of the Tenant's brother.

The Tenant sought return of double the security deposit pursuant to section 38 of the *Residential Tenancy Act*.

The Tenant submitted a letter in evidence wherein he detailed losses he says he incurred as a result of the power going out in his rental unit while he was away at work in 2011 and 2012. He also wrote that the air conditioner in his rental was installed in a wall, not an exterior window, which he says caused moisture to accumulate and drip on an antique dresser causing significant damage. The Tenant claimed the following with respect to these alleged losses:

| | |
|--|----------|
| Loss of freezer | \$150.00 |
| Loss of food in 2012 due to power outage | \$150.00 |
| Cost to repair dresser | \$500.00 |
| Filing fee | \$50.00 |
| Total Claimed | \$850.00 |

* Note: although the Tenant wrote in his letter that he suffered a \$300.00 loss of food in 2011, that amount was not included in the Tenant's Application for Dispute Resolution.

In support of the amounts claimed, the Tenant submitted a letter from K.M. wherein K.M. wrote that the cost to refinish the dresser would be \$500.00.

Aside from the letter from K.M., the Tenant failed to submit any photos, receipts or further evidence which would support his claim that he suffered the above losses.

A.M. testified on behalf of the Landlord. She stated that she did not receive the letter which was submitted in evidence by the Tenant and which purported to provide his forwarding address to the Landlord. A.M. testified that the first time she saw this letter was when she received the Tenant's application package.

A.M. further testified that the Tenant used his deep freeze until he moved out and that she did not believe it was damaged. She further submitted that his claim that he, his brother, and their guests were without power for four days in December of 2011 was similarly fabricated. She stated that as soon as she was made aware that the electricity was not working in 2012, she attended to repairing it and does not believe the Tenant suffered any associated losses. A.M. further testified that at no point did the Tenant tell her that he lost food as a result of the power outage, and that he never mentioned his deep freeze was damaged. A.M. reiterated that the Tenant moved the deep freeze out with him when he moved out in August of 2014.

In response to my question as to whether the Tenant had ever told her that his antique dresser was damaged, A.M. stated that approximately three years earlier the Tenant showed her the dresser. She stated that she was not aware of the damage pre-existed his tenancy, if it was damaged by the air conditioner, or if he was simply "making it up". A.M. further testified that K.M., who was the individual who apparently wrote the letter indicating the dresser would cost \$500.00 to repair, was in fact a friend of the Tenants; A.M. added that K.M. had applied to move into the rental unit and when A.M. declined his request, he wrote this letter. A.M. submitted that if the Tenant believed the dresser required professional refinishing, he should have provided an estimate from a reputable antique refinisher, not a personal friend and that in any case she opposed any compensation for this alleged loss.

H.C. also testified for the Landlord. He testified that at no time did the Tenant tell him that he lost food or a deep freeze due to a power outage. He testified that the deep freeze was in the Tenant's rental unit until he moved out in August of 2014.

H.C. stated that the Tenant did ask for reimbursement for the damage to the dresser and H.C. confirmed that he did not actually see the dresser.

G.A. provided a brief reply on behalf of the Tenant. When I asked for further details regarding K.M., G.A. stated that K.M. was a friend of the Tenant's and that he has done some "wood work" in the past.

Analysis

The Tenant did not attend the hearing, did not call any witnesses and instead presented his evidence by way of a written letter and the submissions of his father, G.A. who appeared as the Tenant's agent.

In contrast, the Landlord's provided affirmed testimony and disputed the entirety of the Tenant's claims.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case the Tenant had the burden of proving he provided his forwarding address to the Landlord's in writing. The Landlords deny receiving the letter until they received the materials filed in support of the Tenant's application. The letter indicates it was witnessed by S.C.; yet, S.C. was not called as a witness during the hearing before me.

I find that the Tenant has failed to prove that he provided the Landlords with his forwarding address in writing. Accordingly, his application for double the security deposit, pursuant to section 38 is dismissed with leave to reapply. **The Landlords have 15 days from the date of receipt of this my Decision (which as it will be mailed will be deemed received five days from today's date); namely June 22, 2015 to return the security deposit to the Tenant, or make an application pursuant to section 38.**

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant submitted insufficient evidence to show that he suffered a loss of food and his deep freeze as claimed on the Tenant's Application for Dispute Resolution. The Tenant failed to submit any photos, receipts or other evidence which would substantiate these claims. Further, I accept the undisputed testimony of A.M. and H.C. that at no time did the Tenant bring to their attention that he had suffered food losses or that his deep freeze was damaged due to a power outage. I also accept the Landlord's undisputed testimony that the Tenant moved his deep freeze out in August of 2014.

Had it been rendered unusable as he claimed, presumably it would have been removed earlier; conversely, had he replaced the deep freeze, a receipt for the replacement purchase should have been introduced in evidence. Accordingly, I dismiss his claim for compensation for food loss and the cost of his deep freeze.

I find that the Tenant submitted insufficient evidence to support a finding that the Landlord should compensate him for damage to his dresser pursuant to section 67. The Tenant failed to submit any photos of the alleged damage to his antique dresser. Both the Tenant's agent, and the Landlords, confirmed that K.M. was a friend of the Tenant's and according to the Tenant's agent, K.M. had "done some word work" in the past. This information does not support a finding that K.M. is qualified to give such an opinion as to estimated cost to refinish the dresser.

As the Tenant has failed to establish his claims, his request to recover the filing fee is similarly dismissed.

Conclusion

The Tenant failed to establish that he provided the Landlord with his forwarding address in writing. The Landlords have until June 22, 2015 to return the security deposit to the Tenant, or make an application pursuant to section 38.

The Tenant failed to establish his claim for compensation for food loss, damage to his deep freeze and dresser pursuant to section 67. As the Tenant failed to establish his claims, he is not entitled to recover the filing fee.

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: June 02, 2015

Residential Tenancy Branch

