



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Novia Vista Rockwell Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the named landlord attended the hearing, and the landlord also represented the landlord company. The parties each gave affirmed testimony and were given the opportunity to question each other. No evidentiary material has been received by either party, and no issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of electricity?

Background and Evidence

The tenant testified that this tenancy began as a fixed-term tenancy about 2 ½ years ago and is now a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable on the 1st day of each month.

The tenant further testified that power was off for 67 days commencing March 3, 2015. The tenant had won a previous Arbitration with the landlords and the tenant believes power was cut off in retaliation. The tenant called BC Hydro who confirmed that it was not cut off due to unpaid bills or cut off by BC Hydro at all. Hydro is in the tenant's name, not included in the rent, and the landlord has access to the power room, but the tenant does not. The tenant didn't inform the landlord because the landlord never talks

to the tenant, never answers the door, and the tenant even had to get the police to serve notice of this hearing.

The tenant claims \$6,700.00 for the landlords causing the tenant to be without power.

The landlord testified that she resides in the same building and is generally available within 2 hours of calls, and doesn't leave the property often.

The first that the landlord knew that the tenant had no power was upon being served with the Tenant's Application for Dispute Resolution and notice of this hearing, which was mid-March, 2015. Upon receiving it, the landlord went to the electrical room with the maintenance person for the building and there was nothing amiss with the meters. The electrical room is locked and has a lock box for entry by the maintenance person for the building as well as for Shaw Cable, Telus and some contractors. The landlord tried to talk to the tenant but he just threw his hands up and said, "I'm going to get you," as he walked away. Since nothing was noted in the electrical room, there was nothing more the landlord could do.

The landlord further testified that just after Easter Monday in April this year the landlord saw that the tenant had power in his suite.

In rebuttal, the tenant testified that power in April was a result of an extension cord from another unit.

Analysis

Where a party makes a claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any such damage or loss.

In this case, I accept the testimony of the tenant that he was without power for some time, but there is absolutely no evidence to support any notion that the landlord was aware of that. The tenant admitted that the landlord was never notified, nor is it proven that the landlord turned off the power in the first place; that is purely speculation by the tenant.

In the circumstances, I find that the tenant has failed to establish elements 2, 3 or 4 in the test for damages, and the tenant's application is hereby dismissed in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

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 13, 2015

Residential Tenancy Branch

