



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPT, FF

Introduction

This hearing dealt with an application by the tenant seeking an order of possession and a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord submitted documentation for this hearing, the tenant did not. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to an order of possession?

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

The tenant gave the following testimony. The tenancy began on or about December 1, 2014. Rent in the amount of \$375.00 is payable in advance on the first day of each month. The tenant stated that he was challenging the notice to end tenancy by having this hearing. The tenant stated that he moved out of the unit on February 8, 2016. The tenant stated that the landlord kicked him out without cause and has taken all of his personal items. The tenant stated that he wants his unit back and that he wants \$5000.00 as compensation for his lost personal belongings.

The landlord gave the following testimony. The landlord stated that the matter of the tenancy has already been dealt with by the Branch on February 18, 2016 file #845356 where the Arbitrator dismissed the tenants application to have the One Month Notice to End Tenancy for Cause set aside. The landlord stated that the tenant left of his own free will and that his personal belongings are stored and waiting to be picked up.

Analysis

Firstly, in regards to the tenancy, the tenant gave testimony that he vacated on his own volition. Also, the matter has been dealt with by another Arbitrator which therefore does not require me to consider the merits of the claim. I find that this falls under Res Judicata.

The tenant is also seeking \$5000.00 as compensation for the loss of his personal belongings. Section 67 of the Act states that 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 all four of 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.

The tenant has not submitted any documentation to support this claim. In addition, the tenant has failed to meet any of the four grounds as listed above. The landlord was clear that they have his personal belongings in storage for him to be picked up. I find that the tenant has failed to illustrate any loss and I therefore dismiss this portion of his application.

The tenant has not been successful in his application.

Conclusion

The tenants' application is dismissed in its entirety.

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: March 02, 2016

Residential Tenancy Branch

