



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, FF, MNDC, MNSD, OLC, OPT

Introduction

This is an application brought by the tenant requesting a Monetary Order in the amount of \$25,000.00 however at the beginning of the conference call the applicant stated they are reducing their claim to \$13,350.00.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Issue(s) to be Decided

The main issue I dealt with today is whether or not the tenant was forcibly evicted from the rental unit, or whether the tenant vacated on his own accord.

Background and Evidence

The tenant testified that when he returned to the rental property on May 4, 2016 he was confronted by the landlord who took his keys from him and told him they had packed his belongings and told him that he had to leave the rental property.

The tenant further testified that, at that time, he asked the landlord if he could retrieve some of his belongings, however the landlord denied that request and insisted that he leave the property.

The tenant further testified that as a result of the landlord's actions he became homeless.

The landlords testified that on May 4, 2016 the tenant moved his belongings into the hallway, blocking a fire exit, and inform them that he would not be staying in the rental suite any longer.

The landlords further testified that for safety reasons they moved the tenant's belongings from the hallway to a storage facility.

The landlords further testified that, three hours later, the tenant came and stated that he was vacating the rental unit, would not be staying there any longer, and voluntarily handed over the keys. At no time did they force the tenant out of the rental unit or force him to hand over the keys.

The landlords further testified that the tenant's belongings are still in storage and they are available for him to retrieve at any time; however they want the tenant to take all his belongings, and do not want him to pick through them and then leave some behind.

The agent for the tenant stated that he thinks is unreasonable to believe that the tenant would voluntarily move out of his rental unit, leaving his belongings behind, only to become homeless.

The agent for the tenant further stated that, even if the tenant did vacate the rental unit and turn over the keys, the landlord did not have the right to re-rent the unit as the tenant had not given any proper Notice to End Tenancy.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondents that burden of proof is not met.

In this case, although the tenant claims that he was forcibly evicted from the rental property, he has provided no other evidence other than his own testimony, and since the landlords deny forcibly evicting the tenant, it is just the tenants word against that of the landlords, and that is not sufficient to meet the burden of proving the tenants claim that he was forcibly evicted.

The tenants agent has also argued that since the tenant gave no Notice to End Tenancy, this tenancy had technically not ended and therefore the landlords did not

have the right to re-rent the unit; however section 44(1)(d) of the Residential Tenancy Act states:

44 (1) A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit

Therefore since the landlords have stated that the tenant vacated the rental unit and returned the keys, it is my finding that the landlords could reasonably make a finding that this tenancy had ended. I am therefore unwilling to issue any Order of possession under section 54 of the Residential Tenancy Residential Tenancy Act, because the tenant does not have the right to possession of the rental unit.

Further, since the tenant has not met the burden of proving that he was forcibly evicted from this rental property I also deny the tenants request for monetary compensation.

The tenant had also requested an Order for return of the tenant's personal property, however since the landlord has always been willing to return the tenants personal property I am not willing to issue any Order under section 65 of the Residential Tenancy Act.

Conclusion

This application has been dismissed in full, 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: June 20, 2016

Residential Tenancy Branch