



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 was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on May 9, 2018. The Tenants applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord stated he got served with the Tenants' Notice of Hearing package several months before the hearing. The Tenants stated that they sent their documentary evidence by mail on April 24, 2018. The Landlord stated he never got this evidence. However, pursuant to section 88 and 90 of the *Act*, I find this evidence is deemed served 5 days after it was mailed, on April 29, 2018.

Although I have deemed that this evidence is served on April 29, 2018, I find the Tenants have failed to serve their evidence in accordance with the rules of procedure. Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. The evidence was exchanged late, which I find is prejudicial to the Respondent. As such, I will not consider the

Tenants' late documentary evidence in this hearing. I will only consider testimony provided by the Tenants.

The Landlord stated that he sent his evidence, by mail, on April 24, 2018, to the Tenants at the address they had listed for service on the application. Although the Tenants denied getting this evidence package, I find this evidence is deemed served 5 days after it was mailed, on April 29, 2018, pursuant to section 88 and 90 of the Act.

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.

The Tenants have applied to have the security deposit returned to them. However, I note that this issue has already been decided upon, on October 25, 2017, at a previous hearing. That decision and any orders that came from it remain in effect and I dismiss the Tenants' application on this ground.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenants stated that at the time they moved out, rent was \$950.00 and they are looking for monetary compensation equivalent to two month's rent, plus the filing fee (\$1,900.00). The Tenants stated that the Landlord harassed them, shut off their utilities, and caused them to have to move as a result of all of this. The Tenants stated that the Landlord disconnected power to the unit on August 11, 2017, for at least 45 minutes, and also disconnected the water at 9 pm on August 17, 2017, for one hour. The Tenants stated that the Landlord also disconnected the electricity twice on August 23, 2017. The Tenants also stated that the Landlord disconnected their TV and wifi on July 10, 2017. Further, the Tenants stated that on August 31, and September 6, 2017, there was no hot water all day.

The Landlord stated that there was an issue with the electrical panel in August of 2017. The Landlord stated that the power to the Tenants' rental unit spontaneously went off and he called an electrician to come and look at the issue. The Landlord provided a copy of the receipt the electrician gave him showing that he had a 100 amp breaker

changed on August 24, 2017. The Landlord stated that this was the only issue he is aware of with the utilities. The Landlord testified that the Tenants have completely fabricated the rest of the complaints about him shutting off the power and have needlessly called the police to report him. The Landlord stated that the Tenants have no evidence that any of this actually happened and he believes the Tenants were fabricating this to try and extort money out of him.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

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.

After reviewing the totality of the evidence, and testimony before me, I am mindful that the Tenants have provided no documentary evidence to support any of their claims. The Tenants late evidence is not admissible, and I only have testimony from the Tenants on this issue. The Landlord also presented testimony directly refuting the Tenants' claims about harassment. I acknowledge there appears to have been an electrical issue which warranted the Landlord calling an electrician. However, I note that the Landlord took

steps to try to fix the issue and he provided documentary evidence to support this. The Landlord denies any other issue with the utilities and denies that he intentionally did any of what the Tenants are alleging.

In summary, the Tenants claim they are entitled to monetary compensation in the amount of \$1,900.00. However, since each party has provided an equally probably version of events with respect to the utility issue, I find the Tenants have not provided sufficient evidence to meet the burden of proof. As such, their claim is dismissed in full, without leave to reapply.

Conclusion

The Tenants' application is 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: May 10, 2018

Residential Tenancy Branch