



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Tenants Evidence

Counsel for the landlord advised that they did not receive any of the tenant's documentary evidence. The tenants stated that they uploaded their evidence to the Residential Tenancy website and assumed that the landlords would have access to it. After some discussions, the tenants acknowledged and confirmed that they did not serve the landlords their documentation. As the tenants have not served the landlords their evidence, it has not been considered in making this decision. This was explained to the tenants and they indicated that they understood.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or losses arising out of this tenancy?

Background and Evidence

The tenants gave the following testimony. HC testified that the tenancy began on June 1, 2021. HC testified that he and his wife had a fight on June 6 or 7, 2021 about him going to Victoria for work and she was upset he was leaving for her upcoming birthday on June 11. HC testified that the landlords evicted them on June 8, 2021 because TM is "white" and that "I'm a brown boy".

TM testified that they illegally entered her suite and began removing all their personal items. HC testified that they lost numerous items such as a tablet, smartphone, mattress, heater, mini fridge, and couches. TM testified that they had to sleep in their car for a week and were homeless. TM testified that she has been traumatized by this event and can't rent a basement suite in Surrey because she's scared of "brown" people. HC testified that he is asking for \$20,000.00 for loss of personal items, and mental and physical stress.

Counsel for the landlords made the following submissions. Counsel submits that the tenants have not provided a monetary breakdown of items and costs of the items allegedly damaged or lost. Counsel submits that the tenants did not even provide estimates of cost to replace the items. Counsel submits that TM advised the landlord that the tenancy was over, and HC no longer lived in the unit. Counsel submits that the tenants abandoned items and despite several attempts by the landlord to have the tenants pick up the items, the requests were ignored.

Counsel submits that the tenants have given various versions of their story and the items and amounts keeps changing. Counsel submits that the tenants are seeking a payout. Counsel submits that the landlord was not obligated to return the rent and deposit but did so to end the matter peacefully. Counsel submits that the tenants have fallen far short of providing enough evidence to be granted a monetary award and asks that the matter be dismissed in its entirety.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Although the tenants have requested a monetary order of \$20,000.00, they have not provided sufficient evidence to reflect that amount, such as receipts or invoices. In addition, the tenants have failed to provide sufficient evidence that the landlords evicted the tenants on the basis that TM is Caucasian. Furthermore, when the tenants were cross examined, they provided contradictory evidence.

Each time counsel asked the tenants to clarify their answer, they would provide a different version of events. I found the tenants testimony to be unreliable. Also, the tenants have failed to provide sufficient evidence that the landlord was reckless or negligent. Based on the above, I find that the tenants have not satisfied any of the four elements listed above to granted a monetary order under section 67 of the *Act*, accordingly; I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

The tenant's application is 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: January 04, 2022

Residential Tenancy Branch