



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hardal Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenancy began twenty years ago and ended on June 30, 2012. The tenants were obligated to pay \$655.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$150.00 security deposit.

The tenants' agent gave the following testimony:

The agent stated that the tenant is seeking \$25000.00 compensation for being fraudulently evicted. The agent stated the tenant was given a Two Month Notice to End Tenancy for Landlords Use of Property on the basis that "*The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*" The agent for the tenant stated that the landlord did not obtain the permits and now seeks compensation for loss of past use and future enjoyment.

The landlords counsel was fully instructed and submitted the following:

Counsel stated that this matter has already been addressed in a separate hearing by way of settlement and that Section 51 of the Act (Tenant's Compensation) is not

applicable and that the matter should be dismissed. Counsel submitted that even if that section is still available to the tenant it should be dismissed on the basis of no new evidence being submitted for this hearing. Counsel stated that the evidence that the tenant provided was entirely the same that was submitted during the hearing were a settlement was reached on April 16, 2012.

Analysis

Both parties were given full opportunity to present their evidence for consideration. It's clear to me that this matter was resolved by a mutual agreement and not under a Notice; therefore the compensation section of the Act is not available to the tenant in that regard. The matter was resolved by a mutual agreement on April 16, 2012 where the tenant was given monetary compensation and the Arbitrator made specific notation "I have cancelled the Notice to End Tenancy March 12, 2012."

However, even if I was to accept the tenants' position that compensation under Section 51 was available to them; the tenant was unable to provide any new information for this hearing except a hand written log of phone inquiries in regards to the permits which was of little evidentiary weight.

In addition 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 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 tenants' agent was unclear and unsure as to how the tenant was entitled to the amount but felt it was a fair request based on her long term tenancy. I have reviewed the evidence and agree with the landlords counsel on both arguments submitted. Based on all of the above and on the balance of probabilities I dismiss the tenant's application.

Conclusion

The tenants' 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: December 16, 2013

Residential Tenancy Branch

