



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order for compensation for damages suffered due to illegal eviction by the landlord, trespass by the landlord and changing of the locks.

Service:

The tenant applicant did not attend. The landlord attended and gave sworn evidence that a Notice to End Tenancy dated November 2, 2014 to be effective November 12, 2014 was served on the tenant personally and the tenant /applicant personally served the Application for Dispute Resolution on them as landlords. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord trespassed on their property, changed the locks and thus illegally evicted them? If so, to how much compensation has the tenant proved entitlement? Is the tenant entitled to recover filing fees for this application?

Background and Evidence

The tenant applicant did not attend the hearing. The landlord attended and after waiting 10 minutes without success for the applicant's attendance, the hearing commenced. The landlord was given opportunity to be heard, to provide evidence and to make submissions. The landlord said the tenancy commenced about ten months ago, rent is \$2000 a month and a security deposit and pet damage deposit totalling \$2000 was paid.

The landlord said the tenants served a Notice to End their tenancy on October 19, 2014 to be effective November 19, 2014. The landlord pointed out to the tenant that such a Notice would not be effective until November 30, 2014. The tenants refused to pay rent for November so the landlords served their Notice to End Tenancy on November 2, 2014 under section 46 of the Act for unpaid rent. The tenants vacated early in

November as witnessed by some neighbours. The landlords posted Notice of Entry multiple times and finally entered to inspect without the tenants present. The landlords said they found all the valuable items had been removed from the unit except for an air conditioner and heater in the closet; the tenants returned and picked up these items later. Upon inspection, the landlords said they found an electric fireplace and couch belonging to them had been taken by the tenants so they contacted the Police to report the theft. The Police attended on November 12, 2014 and walked through the tenant's unit with the landlord; they advised the landlord to change the locks for the safety of the other tenants in the building as the tenants had apparently left and already taken some items not belonging to them. Only garbage was left.

Included in the evidence is the Notice to End Tenancy, correspondence between the parties including the tenants' Notice to End Tenancy, photographs of garbage left and a video by a neighbour witnessing the move out of the tenants. No evidence was filed by the tenants to support their claim. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The tenants claim \$5,000 as compensation for illegal eviction, changing of locks and trespass. The onus is on them as applicants to prove their claim on a balance of probabilities. They did not attend to support their claim and filed no documentary evidence. I find the weight of the evidence is that the tenants voluntarily vacated the premises owing rent and taking some items belonging to the landlord. I find the landlord's evidence credible as it is well supported by the documentary evidence and the sworn testimony in the hearing.

Conclusion:

I dismiss the application of the tenants in its entirety without leave to reapply. I find them not entitled to recover filing fees for this application.

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 17, 2014

Residential Tenancy Branch

