



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC RPP FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation of \$5,000.00, the return of the Tenant's personal property and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has the Landlord breached the Act, entitling the Tenant to compensation?

Should the Landlord be ordered to return the property of the Tenant?

Background and Evidence

The parties entered into a written tenancy agreement on May 30, 2008. The rent agreed to be paid by the Tenant was \$1,600.00 per month. The Tenant moved into the rental unit on May 31, 2008.

At the outset of the hearing the Tenant admitted he did not have a good recollection of the dates of the events to be examined in the hearing. He then explained the circumstances of his Application and the Landlord provided her testimony in turn.

There was contradictory evidence on the arrangements to pay the rent. Apparently the roof of the residential property containing the rental unit required work and discussions took place about the Tenant doing work in exchange for rent.

The evidence of the Tenant was that he was to repair the roof, install 3 skylights and work on a deck in exchange for three months rent.

The evidence of the Landlord was that the arrangement with the Tenant was he would pay monthly rent on the first of the month as required in the written tenancy agreement. The work done on the roof of the rental unit would be credited to the Tenant against his rent payments.

It is unfortunate that neither party set out the terms of this agreement on paper.

At the outset of the tenancy the Tenant provided \$1,200.00 and had another person pay the \$400.00 balance of the first month of rent. Arrangements were discussed for the Tenant to pay his security deposit in two instalments.

The Tenant began work on the roof approximately one week after moving into the unit. Shortly after starting the Tenant informed the Landlord that the entire roof needed replacing. The Landlord agreed to this.

Approximately two weeks into the tenancy the Tenant requested that the Landlord add another person, his new girlfriend, to the lease. The Landlord did

this. Approximately two weeks later the Tenant informed the Landlord to remove this person from the lease as she had moved out. The Landlord did this.

According to the evidence of both parties all work on the roof stopped around this time, approximately the end of June or beginning of July in 2008.

On the 2008 Canada Day long weekend the Landlord received complaints regarding noise from a party at the rental unit. It took several days for the Landlord to talk to the Tenant about this complaint and the fact that rent was due for July. The Tenant informed the Landlord he had no money to pay the rent. He explained he was away on the Canada day weekend and his friends had used the rental unit for a party, therefore he told the Landlord it was not his fault.

Over the remainder of July the Tenant repeatedly gave the Landlord different versions about when the roof would be finished. On July 30, 2008, the Landlord was informed the hydro had been cut off to the unit for missed payments. The Landlord discussed this with the Tenant and he informed her that he did not need the hydro in the summer and that he would deal with it in the fall. The Landlord discussed with him precautions to take regarding the refrigerator, such as removing food and propping the door open. He informed the Landlord he had cleaned out the fridge, washed it and had propped open the door.

Following this the Landlord had increasing difficulty communicating with the Tenant. No rent was paid for August and the Tenant informed the Landlord that he was ill and could not work on the roof. The Landlord later found out the Tenant was working every day at his usual job, with no mention of illness to his employer. Through other sources the Landlord was informed the Tenant was planning on leaving town and not paying his rent. This would have also left the repairs to the roof incomplete.

According to the Landlord, the Tenant phoned her on August 22, 2008, and informed her he was vacating the rental unit at the end of September and making arrangements to move to ABC. He apparently told her he would finish the roof before he left.

According to the Tenant this conversation occurred on August 31, 2008.

On September 1, 2008, the Landlord went to the rental unit and found that the roof had not been completed.

As no rent had been paid on September 1, 2008, the Landlord issued a Notice to End Tenancy to the Tenant. It was served by posting on the door on September 3, 2008. At this time the Landlord was informed by an occupant of another unit that there was a strong odour coming from the rental unit. The Landlord became concerned and entered the rental unit and found that the refrigerator was full of rotting food, mould and maggots. She left a note for the Tenant to contact her as soon as possible.

On September 6, 2008, the Landlord made arrangements with another person to complete the work on the roof of the rental unit.

During September the Landlord had several reports from the occupant of the other rental unit that people unknown to the occupant, not the Tenant, were entering the rental unit.

By September 18, the Landlord had not heard from the Tenant. The Landlord sought advice and made a choice to consider that the Tenant had abandoned the rental unit. On September 21, 2008, the Landlord followed the procedure as set out in the regulation to the Act to deal with the Tenant's personal property and put it into storage, cleaned the unit and sought new tenants for October 1, 2008.

On September 22, 2008, the Tenant phoned the Landlord to inform her he could not complete the roof. The Tenant testified he had found a third party who was willing to complete the work on the roof for him. He did want to come to XYZ to pick up his personal belongings at the rental unit. The Landlord informed him that the roof had been finished and his property was in storage. She explained that he would have to reimburse her for her costs before the property would be returned to him. The Tenant became upset and ended the phone call. He then filed this Application. He alleges the Landlord acted illegally.

Analysis

Based on the foregoing, the relevant evidence submitted and on a balance of probabilities, I find that the Tenant's Application for Dispute Resolution must be dismissed. My reasons follow:

I find the Tenant did not give the Landlord a Notice to End Tenancy as required under the Act.

Most importantly, I find that the circumstances here and the behaviour of the Tenant were sufficient for the Landlord to have considered that the personal property and rental unit had been abandoned, and to take the steps she did. I have reviewed the evidence of both parties and find the Landlord properly followed the regulation to the Act in dealing with the property of the Tenant.

I have also reviewed the accounting of expenses the Landlord is requiring the Tenant to pay prior to the return of his property. Aside from an amount charged for "bookkeeping" which the Landlord agreed to deduct from the expenses, the amounts charged reflect the reasonable costs of removing and storing the property, the search in the Personal Property Registry and the amounts payable to the Landlord under the Act and the tenancy agreement. The Tenant must pay

this amount to the Landlord or she may dispose of it in accordance with the regulation.

Where there is a contradiction between the parties' evidence, I prefer the evidence of the Landlord over the Tenant's as to the facts and events which took place. For example, the Tenant stated he only had vague recollections of the dates of many of these events, yet when the Landlord cited certain dates, he disputed those and wanted to substitute dates he initially was uncertain of.

I find the Tenant failed to abide by his obligations to the Landlord in regard to paying the rent and to repair the roof. I do not accept the Tenant's evidence about the arrangements to pay the rent by working on the roof. The written tenancy agreement is clear and supports the Landlord's evidence regarding the rent payments.

I find the Tenant is not entitled to any compensation from the Landlord.

Lastly, I find the Tenant would have had no right to unilaterally substitute another worker to complete his work. The arrangements made to work on the roof were solely between the Tenant and the Landlord. It was his responsibility and he failed to complete it.

In summary, the Tenant was the author of his own misfortune.

Conclusion

I dismiss the Application for Dispute Resolution of the Tenant.

The Landlord has acted in accordance with the Act and regulation. The Tenant must pay the reasonable costs of the Landlord prior to having his property returned. Failing that the Landlord may dispose of the property in accordance with the regulation.