



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

MNDC, RPP

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for the loss of her personal items and an order for the return of her personal property.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the tenant established a claim for compensation? Does the landlord have the tenant's personal property in her possession?

Background and Evidence

The tenant returned to Canada on April 07, 2009, after spending two years abroad and arrived at the landlord's home without any prior arrangement. The tenant stated that she had spent two weeks at the landlord's home prior to her trip abroad and returned to the landlord's home in the hope that she could spend some time there temporarily, while she looked for permanent accommodation. The tenant stated that she paid the landlord \$750.00 but did not get a receipt.

The personal relationship deteriorated and the tenant stated that the landlord served her with a ten day notice to end the tenancy, with an effective date of April 30, 2009. The tenant stated that she took her cell phone and passport and moved out on May 01, 2009 at approximately 11:00 a. m.

She returned after midnight with her sister, to retrieve the balance of her belongings, but the landlord was not home and the locks were changed. The tenant called for police

help but was not able to gain access to her belongings. She left and spent that night at her sister's home. The tenant agreed that the landlord allowed her to retrieve the rest of her belongings on May 04, 2009.

The landlord testified that on April 07, 2009, she was out in her back yard when she heard her name being called. She went to the front of her home and found the tenant standing in front of her garage, with five suitcases. She stated that the tenant had just arrived from overseas and she was looking for some temporary accommodation. Since the landlord knew the tenant from two years ago, she allowed her to place her suitcases in the garage and use a bedroom in the landlord's part of the home. The lower level of the home was rented to other tenants.

The landlord stated that the tenant has mental health issues and started acting up. One day the tenant threw all the food from the landlord's freezer into the garbage can and on another day, she threw the landlord's furniture into the back yard. The landlord stated that she grew increasingly afraid of the tenant's erratic behaviour and asked the tenant to leave. The tenant asked the landlord to serve her with a notice to end tenancy, to enable her to apply for welfare.

The landlord stated that the tenant shared the accommodation with the landlord using the same kitchen. However, the tenant stated that a kitchenette was set up in the laundry room for her use. The landlord argued that there was a freezer and a microwave in the laundry room, but no cooking facilities.

The landlord stated that after the tenant left on May 01, 2009, she contacted her several times to make arrangements for the tenant to take the balance of her belongings. The tenant did not return her calls. The landlord denied that the tenant or police came to her residence after midnight on May 01, 2009. On May 04, the tenant came by with a male and they loaded the tenant's suitcases into a van. The landlord has filed photographs showing the suitcases being taken to the van. The landlord has also filed two witness statements to corroborate her version of events.

The tenant is claiming \$300.00 towards the loss of her personal property. She stated that the landlord took her shampoo, conditioner, hair colour, wall calendar, dried fruit and other items of food. The landlord denied having taken any of the above items. The tenant did not file any evidence to support her claim.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant is making a claim of \$300.00, for items that she states were taken by the landlord. The landlord denies having taken the tenant's personal belongings and has filed photos of the tenant removing her belongings from the dispute unit. Accordingly, I find that the tenant has not met the burden of proving that the landlord took the tenant's personal belongings.

Conclusion

The tenant has not proven her case for compensation and therefore her application is dismissed in its entirety.

Dated July 09, 2009.

Dispute Resolution Officer