

DECISION

Dispute Codes: MNDC and RPP

Introduction

This application was brought by the tenant seeking monetary compensation for return of personal property and/or monetary compensation for the unreturned property following the end of the tenancy.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to an Order for return of his property and/or a Monetary Order in compensation for its loss.

Background and Evidence

This tenancy began on December 1, 2005 and ended on May 31, 2009. Rent was \$600 per month plus \$30 per parking space and the landlord held a security deposit of \$252.50. of which \$145 was retained by the landlord for cleaning, drapery cleaning and replacement of a laundry card.

During the hearing, the landlord gave evidence that the tenant had been issued with a Notice to End Tenancy for cause on April 14, 2009, setting an end of tenancy date of May 31, 2009.

The tenant gave evidence that he had been incarcerated on May 11, 2009 and remained in custody until July 24, 2009. In the interim, his parents attended the rental building and the building manager admitted them to the rental unit on the understanding that they had the tenant's permission to enter.

The tenant believed other persons, including a former girlfriend and other staff had been in the rental unit, but landlord gave assurance that no persons other than the tenant's parents had been admitted. Following the parents visit, the landlord had the tenant's belongings removed to a secure storage area where they remained until the tenant removed them in September of 2009.

The tenant makes claim that he is missing a television set valued at \$1,480.86 and books and music for which he claims \$32 and \$72 respectively. The tenant concurs that the remaining goods were of little economic value, although some were of great sentimental value such as the ashes of his late grandfather. He had no contents insurance at the time.

The tenant also makes claim for \$2,000 for a van that he had left on the property, now missing. The landlord stated that the van had been moved to the street by construction workers making repairs to the large rental building without his knowledge. On or about June 5, 2009, it was towed away, apparently by the city's towing agent.

The tenant, who is again in custody, was not certain of its whereabouts at present but suggests it is probably in the towing company's impound yard.

Analysis

Due to the unusual circumstances surrounding the conclusion of this tenancy, it is extremely difficult to assign responsibility for the tenant's losses. The landlord in large followed the requirements of *Part 5 – Abandonment of Personal Property* of the *Regulations* under the *Act* and went beyond the 60 day requirement in storing property until the tenant retrieved it in September.

As to the missing television and other items, the parties seemed to agree that they had somehow gotten into the hands of a female neighbour of the tenant and that their retrieval remained possible. I find that no action or failure to Act on the part of the landlord with respect to their loss has been proven.

As to the missing vehicle, section 7(b) of the Act requires that either party to a rental agreement making claim against the other for loss or damage, must do whatever is reasonable to minimize that loss. In this instance, there is a question as to whether the tenant acted promptly to recover the vehicle to minimize any loss. In any event the amount of any loss remains undetermined and I cannot make an award on the claim.

Conclusion

I find that the tenant has not proven that the landlord is responsible for the losses claimed and the application is dismissed without leave to reapply.

June 15, 2010