



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

LRE Return the Tenant's Property

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking the return of the tenant's property or compensation for loss under the Act.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive an order to have property released or a monetary order in regards to the landlord taking possession of the unit and removing the tenant's possessions.

- Whether the tenant is entitled to the return of property held in the landlord's possession.
- monetary compensation under section 67 of the *Act* for lost property that was under the landlord's care and control.

Background and Evidence

This tenancy began approximately 17 years ago and the rent was \$850.00. The tenant was removed from the premises and hospitalized in early February 2010 and his co-tenant was also hospitalized during that period. The tenant had no recollection of what communication he had with the landlord or others during this period time. However, the tenant stated that it was never his intention to abandon the rental unit. The tenant

testified that he was aware that when his co-tenant had returned to the rental unit she found that the locks had been changed. The tenant testified that once he was released, he live in a shelter where he has spent the last four months. The tenant testified that when he was well enough, he attempted to get his possessions back that had been removed by the landlord but found that they were in a storage unit and the landlord was requiring reimbursement for the storage costs and rental arrears owed before the items would be released. The tenant stated that he was not really seeking the \$25,000.00 compensation, he just hopes that his property can be returned.

The landlord testified that after the tenant was gone, the landlord had attended the site to find that it was not properly secured and the landlord felt it necessary to lock-up the unit. The landlord testified that the tenant's pet cats had been left unattended and the rental unit was contaminated with rotting food and waste, which the landlord cleaned up for health reasons. The landlord testified that the landlord took action to protect the animals but one cat escaped out the door and the other cat was taken to the animal shelter. The landlord also found that there was a make-shift structure on the deck storing many of the tenant's possessions. According to the landlord it had been improperly wired up with security alarms and the structure was considered to be a hazard. After confirming with the municipality that the structure was not permitted, the landlord believed that he had the authority to disassemble it. The landlord stated that the tenant's belongings were removed and either taken by the tenant's son, who was overseeing the process, or were sent to a paid storage unit, where they have remained to date. The landlord testified that he involved the tenant's son because there was no way to discuss any arrangements with either of the co-tenants who were incapacitated and unreachable. On February 27th, 2010, the landlord's son signed an "*Agreement to Vacate*" form that was created by the landlord. On behalf of his parents, the son gave consent for the landlord to take possession of the unit and to transport all of the tenant's remaining possessions in the unit to the storage unit. The landlord testified that when the tenant left the unit 2 months rental arrears were owed, significant damages were left and possessions were abandoned.

Analysis:

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under these circumstances. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the following test:

1. Proof that the damage or loss exists;
2. Proof that this damage/loss was due to the a violation of the Act or agreement
3. Verification of the actual amount required to compensate or rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by minimizing the loss

It was evident that both parties had not acted in compliance with the Act and regulations. The tenant violated section 26 of the Act by failing to pay rent, section 44 in regards to notice for ending the tenancy and section 37 by not leaving the unit in a reasonably clean and undamaged state. The tenant had also apparently violated a term in the tenancy by erecting a storage structure on the deck. The landlord violated section 44 of the Act by evicting the tenant without obtaining a valid order of possession and writ from the courts, section 31 by changing the locks, section sections 28, 29 and 30 by denying access to the unit and portions of Part 5 of the Regulations.

That being said, the main determination that was before me was what should be done now, given the complexity of the situation. The landlord had suffered significant inconvenience and financial loss because of the way things transpired and had obviously tried to manage a crisis that was not of his making in the best way he could.

The tenant was in a position where, in addition to significant health concerns, he had lost a 17-year tenancy and all of his possessions at a time when he was now facing the prospect of “starting from scratch”.

In determining what the best course of action should be, a mediated discussion ensued. The landlord made a generous offer to waive rent owed and the storage costs, which were substantial. The landlord agreed to provide the tenant with a key to the storage locker to remove his possessions. The tenant’s responsibility would be to call the landlord 2 days ahead during business hours to make arrangements to pick up the key and then retrieve all of his property from the locker and completely clean it out. This would need to be completed by September 12, 2010.

The parties both felt that the proposed solution was workable and a mutual agreement was successfully reached.

Conclusion

Based on the mutual agreement of the parties, I find that the matter has been resolved provided that the above terms are met. Accordingly I found that no order was necessary in regards to the tenant’s application and the hearing was closed.

September 2010

Date of Decision

Dispute Resolution Officer