



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act stemming from the landlord's actions in refusing to release the tenant's property.

The tenant appeared and gave affirmed testimony. The landlord did not appear. The tenant testified that the landlord was served by registered mail sent on July 31, 2010 and provided the tracking number issued by Canada Post.

Preliminary Matter

Evidence was received from the landlord to file. However, the tenant testified that the landlord's 2 evidence packages were never received by the tenant. Rule 4.1 requires that , if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents and other evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure. (my emphasis)

Accordingly it was decided that the landlord's evidence will not be considered in making the determination on the tenant's application.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for damages and loss allegedly caused by the landlord removing the tenant's possessions that remained in the unit and refusing the tenant access to retrieve them.

The burden of proof is on the applicant.

Background and Evidence

The tenant testified that the tenancy began in September 2009 with rent set at \$600.00 and a security deposit of \$300.00 was paid. The tenant stated that the tenancy ended at the request of the landlord, without a legitimate notice on the approved form when the landlord told the tenants that he intended to sell the rental unit. According to the tenant, they vacated on June 30, 2010 and removed most of their possessions, but were not able to immediately transport all of their belongings from the unit due to a serious medical issue that arose during the move-out process. The tenant stated that they intended to return to retrieve the remainder of their property in a few days, which consisted of the following items as listed in evidence by the tenant:

a dishwasher; computer desk and chair; kitchen table and chairs; vintage speakers; area rug; air conditioner; ottoman; glider chair; shelves; 3 heaters; microwave stand; vacuum; T.V; clothing; window treatments; food; supplies and miscellaneous items. The tenant had also left a 1980 camper van parked on the property that has apparently since been removed by the landlord to an unknown location or disposed of.

The tenant testified that on July 5 2010 they arrived to find that the locks had been changed and the landlord has since refused to let the tenants back onto the property. The tenants contacted police who advised them to make an application for dispute resolution. The tenants are claiming compensation for the value of the property taken by the landlord. and provided an estimated the value of each missing item.

The tenant testified that their written forwarding address was provided to the landlord in July 2010, and provided a copy of the communication requesting the return of the security deposit. However, the security deposit was never returned. The tenant is seeking a refund of the deposit.

In addition to the above, the tenant is seeking compensation for rent illegally collected by the landlord for a period beyond the end date of the tenancy. The tenant provided documentary evidence that confirmed the landlord had cashed a \$600.00 rent cheque for July 2010 despite the fact that the tenancy ended at the end of June 2010.

Analysis

Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or

make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenant double the amount of the security deposit and pet damage deposit.

I find that the tenant's security deposit was \$300.00 and that the landlord failed to follow the Act by returning these funds or making an application to keep them to satisfy a debt owed or damages. I find that the tenant is therefore entitled to compensation of double the \$300.00 deposit, amounting to \$600.00.

In regards to the \$600.00 rent cheque allocated for July 2010, which the landlord cashed, I find that the tenant is entitled to be reimbursed \$600.00 by the landlord because no rent was owed for the month of July 2010, as the tenancy had ended by June 30, 2010.

In regard 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 test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, who must prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide sufficient evidence to verify the actual monetary value of the loss or damage.

Section 26(3) of the Act states that, whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not:

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

Even in the cases when a tenant has abandoned the unit, a landlord is required to comply with section 25 of the Residential Tenancy Regulations which states that the landlord must store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal and keep a written inventory of the property. Moreover, section 30 of the Regulations states that the landlord owes a duty of care to the tenant when dealing with a tenant's personal property and must exercise due diligence and caution as required by the nature of the items to ensure that the property is not damaged, lost or stolen. Therefore, by assuming the right to take charge of the tenant's property, I find that the landlord's treatment of the tenant's possessions was not consistent with the duty of care obligations specified in the Regulations.

Having found that the tenant met elements 1 and 2 of the test for damages, I find that the tenant must meet element 3 of the test by proving the value of the loss to support the amount of damages being claimed. Value is normally confirmed through providing documentary evidence and records including receipts. I find that the tenant's list of missing items along with the stated value of each composed from the tenant's memory does not hold the same evidentiary weight that actual receipts would have. The tenant may be certain of the item and the value, but to support a claim for compensation, the tenant is required to prove the value to the dispute resolution officer.

With the exception of the 1980 camper van, I find that the tenant was not able to provide proof of the existence of specific items in question nor to verify that their worth was that

being claimed. However, based on the evidence and the testimony of the tenant, I do accept that tenant likely suffered a loss of property for which the landlord was at fault.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the lost item and reduce the replacement cost to reflect the depreciation of the original value. An item that is used, will not be valued the same as a new purchase. Reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item would be. However, I find it difficult to assess the pro-rated value of the tenant's used possessions and corresponding loss based only on the testimonial evidence provided, in the absence of documentary evidence

Given all of the above considerations and despite the tenant's inability to meet the burden of proof by providing evidence for each specific item on his list, I still find that the tenant is entitled to some compensation. Accordingly I set the value of the nonworking camper van at \$400.00 and the remainder of the used household items at \$450.00 for total damages of \$850.00.

I find that the tenant is entitled to total monetary compensation of \$2,050.00 comprised of \$600.00 for double the security deposit, \$600.00 for the return of a rent cheque wrongfully cashed by the landlord, \$400.00 for the camper van and \$450.00 for the missing possessions

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation from the landlord in the amount of \$2,050.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 2010.

Dispute Resolution Officer