



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPT

Introduction

This matter dealt with an application by the Tenant for an Order of possession and compensation for damage or loss under the Act, regulations or tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on June 23, 2011. Based on the evidence of the Tenant, I find that the Landlord were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

The original hearing was held on July 12, 2011 where both parties agreed to adjourn the hearing so that the Tenant's wife could go to the rental unit to recover their belongings. It was agreed that the second hearing would deal with any unresolved issues after the Tenant's wife recovered the Tenant's belongings from the rental unit.

The second hearing date was set on August 15, 2011 at 11:00 a.m.

The Tenants said they have relocated and they have recovered the belongings that were in the rental unit. Consequently an order of possession is not required; the Order of Possession in the application is withdrawn.

Issues(s) to be Decided

1. Has the Tenant had a loss or damage under the Act, regulations or tenancy agreement and if so how much?
2. Is the Tenant entitled to compensation for a loss or damage and is so how much?

Background and Evidence

This tenancy started on February 1, 2011 as a month to month tenancy. The tenancy ended June 9, 2011 according to the Tenant when he was asked to leave the rental complex by the Landlord. Rent was \$620.00.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$200.00 on February 1, 2011.

The Tenant said he was illegally evicted by the Landlord on June 9, 2011 because he had complained to the Municipality that the Landlord was doing repairs to the building

without a permit. On June 9, 2011 the Municipality issued a stop work Order and the Tenant said that is the reason the Landlord evicted him on June 9, 2011.

The Tenant's wife and the Tenant's Advocate said they went to the rental unit on July 15, 2011 at about 11:15 a. m. to recover the Tenant's belongings. The Tenant's Advocate took pictures and she said the unit was not as the Tenants said they had left it. The bed was turned up on edge, the Tenants clothing was in bags and food and other items were missing. The Tenant's Advocate said the Tenant is amending his claim to \$2,950.00. This claim is made up of the loss of 2 oil paintings for \$1,000.00 a drill for \$30, electric fry pan for \$20.00, toaster for \$10.00, Dishes for \$20.00, a leather hat for \$80.00, saw for \$20.00, food for \$80.00, a building code book for \$300.00 school supplies for \$140.00 pictures for \$60.00, a dolly for \$100.00, work boots for \$80.00, DVD player for \$80.00, phone charger for \$20.00, coffee maker for \$30.00 and coveralls for \$60.00, the June rent of \$620.00 and for the return of the security deposit of \$200.00.

The Tenant's Advocate said the Tenant was illegally evicted on June 9, 2011 by the Landlord and the Landlord did not protect the Tenant's belongings after the Landlord had evicted the Tenant. Consequently the Tenant's Advocate said the Landlord is responsible for the Tenant's lost belongings and the loss that the Tenant has suffered.

The Landlord said they did not evict the Tenant, but were told by the Police that a "No Go" order for the Tenant was in place for the rental unit as a condition of the Tenant's release from custody. The Landlord said the police told them to call the police if the Tenant returned to the rental unit and the police would remove him. As a result the Landlord said the staff was given instructions by the owner of the property on or about June 19, 2011 not to enter the rental unit and to maintain that the door was locked. The Landlord said to the best of his understanding no one entered the rental unit after June 19, 2011. He said that between June 9 and the June 19, 2011 there were no specific instructions about the rental unit as it was still rented to the Tenant and there was no reason for the Landlord to enter the rental unit.

The Tenant said that there was no "No Go" order in place against him, but the Landlord would not let him enter the rental unit or rental complex.

The Landlord said the Tenant's application should be set aside because the Tenant cannot prove the loss as there is no prove that the items claimed were actually in the rental unit. As well the Tenant has not provided any prove of value of the items and the Tenant has not shown that the Landlord was solely responsible for the loss of the items if they were actually in the rental unit. In addition the Landlord said the rental unit was rented to both the Tenant and the Tenant's wife and the Landlord believed the tenancy was still in effect up to July 15, 2011 when the Tenant's wife came and removed their belongings. The Landlord continued to say that there was no restriction about the Tenant's wife having access to the rental unit.

Analysis

There was much contradictory testimony and evidence presented at the hearing. The Tenant said he was evicted on June 9, 2011 and the Landlord said they believed the tenancy was in effect to July 15, 2011 when the Tenant's wife and Advocate came to the rental unit to recover the Tenant's belongings. As well the Landlord said the Tenant's wife was a co-tenant and there were no issues with her entering the rental unit. Consequently I find that the tenancy was in effect until July 15, 2011 when the Tenant's wife and Advocate removed the Tenants belongs as agreed to by both parties during the July 12, 2011 hearing. In addition I find that the Tenants were not evicted by the Landlord, but the tenancy ended on July 15, 2011 by agreement.

With regard to the Tenant's claim for compensation for loss of personal belongings in the amount of \$\$2,130.00, I find that in cases where it is the Applicants word against the Respondents word then the burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met. The Tenant has not met the burden of prove to establish grounds that the loss actually happened and that the Landlord was solely responsible for the loss. I dismiss the Applicants claim for compensation for loss of personal items in the amount of \$2,130.00.

With respect to the Tenants claim for compensation for \$620.00 which represents the rent paid for June, 2011. I accept the Landlord's testimony that the tenancy was still in effect as the female Co-Tenant still had full access to the rental unit; therefore I dismiss the Tenant's claim to recover the June, 2011 rent of \$620.00.

The Tenant has also applied to recover the security deposit of \$200.00. I order the Landlord to comply with the Act in the handing of the Tenants security deposit forthwith.

Conclusion

The Tenant's application is dismissed with leave to reapply.

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*.

Residential Tenancy Branch