

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

The landlord did not attend this hearing, although I waited until 9:45 a.m. in order to enable him to connect with this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant provided written evidence that he sent the landlord a copy of his dispute resolution hearing package by registered mail on August 29, 2011. He provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. The tenant testified that the landlord was living in his former rental unit when the tenant visited his former rental unit in late June 2011. However, the tenant did not know if the landlord was still living in the former rental unit when he sent the dispute resolution hearing package to the landlord on August 29, 2011.

Sections 89 and 90 of the *Act* establish that service of the dispute resolution hearing package by registered mail is deemed to have occurred on the fifth day after mailing. The tenant said that no written tenancy agreement was established for this tenancy and he served the dispute resolution hearing package to the most recent address he had for the landlord. I am satisfied that the tenant served the dispute resolution hearing package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for loss of personal property arising out of this tenancy? Is the tenant entitled to an order requiring the landlord to return his personal property?

Background and Evidence

The tenant said that he moved into the rental premises on or about September 1, 2010. He said that the terms of his tenancy arrangement were never put in writing, but that his monthly rental by the end of this tenancy worked out to approximately \$2,000.00. He said that he did not pay a security deposit for this tenancy.

He maintained that he resided at the rental unit until May 15, 2011, when he suffered a stroke and was admitted to a local hospital. He said that he did not pay rent for either May or June 2011. He provided written evidence that he was discharged from that hospital on June 13, 2011. He provided written evidence that when he returned to the rental unit on June 21, 2011, many of his belongings stored outside had been removed. When he returned to the property the following day to meet with the landlord, he discovered that most of his personal property was missing.

In support of his application for a monetary award of \$25,000.00, the tenant provided a lengthy list of items he maintained went missing while under the landlord's care. This five-page list far exceeded the \$25,000.00 he was claiming. It included a \$20,000.00 boat and trailer. He said that he is uncertain if any of these belongings remain in the landlord's possession as he has not returned to the premises since June 2011. In addition to his application for a monetary award, the tenant requested the return of his personal possessions. The tenant did not enter into written evidence any receipts, invoices, estimates, photographs or statements from anyone to confirm either the existence of the items claimed or their value.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

At the hearing, the tenant was uncertain if some of his personal property remains on the property. He testified that he has had no further contact with the landlord since he visited the former rental premises on June 22, 2011.

I have considered the tenant's application for an order requiring the landlord to return the tenant's personal property. Part 5 of the *Residential Tenancy Regulation* (the *Regulation*) issued pursuant to the *Act* establish how abandoned personal property is to be handled by a landlord. Based on the tenant's testimony it would appear that the landlord could have considered the tenant's personal property abandoned pursuant to section 24(1)(b)(i) of the *Regulation* because he was not occupying the rental premises from May 16, 2011 until June 21, 2011. Sections 24, 25 and 26 of the *Regulation* provide direction on the landlord's obligations and the tenant's options for making a

claim for abandoned personal property. Section 26 of the *Regulation* reads in part as follows:

Tenant's claim for abandoned property

26 (1) *If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [disposal of personal property], the landlord may, before returning the property, require the tenant to*

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property, and...

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part...

The landlord has not provided any evidence that would indicate that he is taking any of these measures to reimburse him for his costs or losses. In the absence of such information, I order the landlord to make available to the tenant any of the tenant's personal property still in the landlord's possession. I order that the landlord make the tenant's personal property available for pickup by the tenant within 14 days of the tenant contacting the landlord to obtain this property.

Although the landlord has not disputed any of the tenant's evidence, I am unwilling to issue any monetary Order on the basis of the very limited evidence provided by the tenant. He has not met the burden of proof required to demonstrate his losses and has not verified the actual amount of any losses he may have suffered. I dismiss the tenant's application for a monetary Order at this time.

Conclusion

I order the landlord to make available for return any of the tenant's personal property that he or his agents are holding. Since the tenant's application for a monetary order is premature until such time as he obtains those possessions still in the landlord's care or custody, I dismiss the tenant's application for a monetary Order with leave to reapply after the landlord has made available the tenant's personal property for return.

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*.