



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was originally convened on September 6, 2011 at which time the tenant requested an adjournment to obtain an advocate. With the agreement of the landlord the hearing was adjourned until September 20, 2011 but again the tenant requested an adjournment so his advocate had time to prepare. The landlord again agreed to the adjournment and the hearing was set for November 21, 2011.

The hearings were all conducted via teleconference but issues pertaining to the merits of the case were not heard until the final hearing of November 21, 2011. At this final hearing the tenant, his advocate and a witness and four agents for the landlord attended.

In his original Application the tenant named the landlord and one of the landlord's agents as respondents. At the request of the landlord's agent I have amended the tenant's Application to remove the agent's name as a respondent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for money owed or compensation for damage or loss, pursuant to Sections, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in March 2008 as a month to month tenancy for a current monthly subsidized rent of \$390.00 due on the 1st of each month. The landlord testified no security deposit was paid, the tenant disagreed with this statement.

The tenant testified that in the fall of 2008 the landlord issued a couple of letters advising him he had to clean up his rental unit and create some pathways through his belongings. Each time the landlord would inspect his rental unit but nothing ever really changed.

The tenant testified that nothing else was said until April 2009 when he got a letter from the landlord stating that they had arranged to have a company come and remove his belongings. He states he was told that he could mark things he wanted to keep and the company would only remove those things that he no longer wanted.

The tenant testified that he was not given sufficient time after this notice to find a garage where he could store these additional belongings and that on the day the company came to remove his belongings he was not allowed to keep some of the things he had marked but he was told he should put things he wanted to keep in the bathroom. He states even though he did that they did not keep those things.

The tenant provided a substantial list of items that he claims the landlord threw out that had financial value but also several items with sentimental and emotional value to the tenant.

The tenant's list of items includes, but is not limited to: phones; remote controls; digital recorders; bar stools; several food items amount to hundreds of dollars; carry alls; art objects; water filters; furniture; lamps; water distillers; coins amounting to \$1,000.00; a juice machine; antique books; adult magazines and sex toys; VHS tapes; DVD's; camera; carvings; runners; clothing; appliances; tools; cash \$9,800.00 in the toe of a running shoe in a bag of running shoes; family memorabilia; notes for a book the tenant was writing.

The tenant testified that he did attend on the day the items were removed but he became overwhelmed at the process and was not able to deal with everything when it happened.

The tenant's witness testified that he had seen 5 or 6 \$100.00 bills fall out of a newspaper in the tenant's rental unit the day before the items were removed. The witness testified that he did not attend the rental unit on the day of the removal of items.

The landlord testified that when they became aware of the condition of the tenant's rental unit they began to work with him to try to have the tenant reduce the volume of belongings in the rental unit. The landlord testified that in doing so they understand how traumatic it can be to go through this process and they tried to go slowly with the tenant.

Then in April 2009 the landlord was given a violation notice from the local fire department stating that this rental unit had excessive amounts of combustibles that constitutes a high fire load. Stored combustibles must be reduced.

As a result the landlord sent a letter to the tenant setting a date in May 2009 for the tenant to be prepared to have items removed from his rental unit. At no time did the landlord restrict the tenant to complete the tasks to the day they had set. The tenant was able to remove any items to any storage facility of his choosing before the deadline date.

The landlord testified they believed the tenant had an advocate working with him to prepare for the removal date but that the advocate was not in attendance on the day the company attended to remove items from the rental unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the testimony of both parties I accept that the tenant has suffered a loss of possessions as a result of these events.

Section 32 of the *Act* requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. In addition, Section 32 requires the landlord to maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law.

I accept the landlord was attempting to meet their obligations in the fall of 2008 by trying to work with the tenant to remove these items. It is unfortunate that the tenant understood the landlord's slow and methodical approach to mean that the issues were not important, however, once the fire department issued an order to reduce the amount of stored combustibles, I find the landlord had no choice but to take swift and determined action.

I acknowledge the landlord did have the option to end the tenancy in order to comply with an order from a local government but chose to work with the tenant to maintain the tenancy. In fact, I commend both parties that the tenancy continues to this day and that the tenant did not lose his home over these events.

I find the landlord took all reasonable steps to involve the tenant in all decision making with regard to what items could be kept. I am satisfied the tenant had access to an advocate to assist him, although I accept the advocated did not assist the tenant on the day of the clean up.

I find, however, the failure of the tenant to assist the landlord from the fall of 2008 until May 2009 to set up alternatives for storage for any items the tenant wanted to keep also contributed to the loss of possessions the tenant has suffered, as acknowledged by the tenant's advocate.

I find the tenant has failed to establish any losses or damages suffered result from a violation of the Act, regulation or tenancy agreement on the part of the landlord.

Conclusion

For the reasons note above, I dismiss the tenant's Application in its entirety.

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: November 22, 2011.

Residential Tenancy Branch