

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* for a monetary claim against the landlord in the amount of \$25,000.00, for the loss of items that were left behind in the rental unit.

This matter was originally heard by Dispute Resolution Officer AH on September 29, 2011 and the tenants were awarded a monetary order against the landlord in the amount of 25,000.00. The landlord applied for a review to have the matter re-heard, on the basis of new evidence and fraud on the part of the tenants. Based on the evidence filed by the landlord along with his review application, the reviewing officer determined that the allegations of fraud were substantiated. Accordingly the decision dated October 18, 2011 was suspended pending a review hearing of the tenants' application for a monetary order.

Both parties attended the review hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Are the tenants entitled to compensation? If so, have the tenants proven that the items disposed off by the landlord were worth at least \$25,000.00? Did other persons have access to the rental unit which housed the tenants' property, during the time the female tenant was incarcerated?

Background and Evidence

The tenancy started on November 04, 2009. The female tenant JE and the male tenant BT, occupied the rental unit along with the JE's two children. On February 05, 2010, JE was arrested and taken to jail. The children were placed with relatives and BT continued to reside in the rental unit. BT testified that he paid \$500.00 in cash to the building manager sometime at the end of March, towards rent for April but did not have any proof of payment. The landlord stated that it was their practice to issue receipts. In any event, BT did not pay the full rent of \$825.00 and was served with a notice to end tenancy. This notice was for cause and was served due to the unsanitary condition of the rental unit that posed a threat of infestation.

BT moved out sometime around the first week of April 2010, but was not sure of the date that he moved out. He left behind all the personal belongings of both tenants. JE wrote several letters from jail to the landlord regarding her personal belongings. The landlord filed these letters into evidence.

In a letter dated March 29, 2011, JE states that her ex husband GN visited the rental unit with her children, to pick up some of her belongings. In her letter she begs the landlord not to dispose of her property.

In a letter dated March 30, from JE's parents to JE, they confirm that the apartment was in a "*disgusting state*" and that the tenant's former spouse GN had visited along with the JE's children to retrieve some belongings. The letter also states that "*those boxes that, apparently you have hoarded, will have to go, they are the big problem according to your managers*"

In a written note dated May 14, 2011, to the landlord, JE authorized GN her '*full and uncontested permission to take over the responsibility on every aspect to do with the contents of apartment 332 that I rented from you on November 01, 2009.*'

In a letter dated June 14, 2011, JE informed the landlord that another ex spouse ME would be helping GN and BT take care of the tenant's belongings. She states that GN would be renting a container to remove the tenant's belongings. BT had contacted JE and told her that since he had found a new job, he would be renting storage space and moving their belongings out of the rental unit. The tenant states that she is not sure whether any or all of the family members would help out with the removal of their belongings.

On August 27, 2011, the landlord had the balance of the tenant's possessions removed and disposed off. The landlord stated that the items consisted of broken furniture and other items that appeared to be of minimal to no value. The landlord filed a note written by the person who hauled away the contents of the rental unit to the dump for disposal. This note describes the items that were taken from the rental unit as a collection of poor condition old bicycle frames, wheels, parts, old bed frames, unusable mattresses and pieces of wood.

The tenants are claiming \$25,000.00 for the loss of household items and have attached an itemized list.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, 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 other party 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.

The claimant bears the burden of establishing each claim on the balance of probabilities. 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. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In this case, the tenant's claim does not satisfy all the components of the above test. The tenant has not proven that this loss occurred solely by the actions or neglect of the landlord. BT had ample time to remove their items. Apart from BT, there were at least three persons who had access to the rental unit for the period of incarceration of JE. The tenant has not proven what items were present in the unit on August 27, 2011, as more than one person had access and authorization to remove items from the rental unit.

The landlord filed a letter from the person who took the items to the dump and this letter confirms that the items left behind were of little to no value.

In addition, BT has not demonstrated that he took steps to mitigate his losses. At the time he moved out, he had the option of taking with him the items that were inside the rental unit.

The landlord disposed of the items at the end of August, which gave BT ample time (in excess of four months) to retrieve their personal belongings from the rental unit. I find that BT did not act in a timely manner to retrieve the balance of their property and failed to take reasonable steps to mitigate their losses.

Pursuant to Section 25 of the Regulations the landlord's obligations are as follows:

Landlord's obligations

25 (1) The landlord must

- (a) 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,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Based on 25(2) the landlord may dispose of the property if it has a total value of less than \$500.00 and its storage would be unsanitary or unsafe.

On or about early April, the landlord served the tenant with a notice to end tenancy for cause, based on the unsanitary condition of the unit and the threat of infestation. The male tenant left the unit and did not clean up or remove the belongings that were unsanitary. Therefore I find that the landlord complied with the Regulations when he removed and disposed of the tenants' belongings based on their value and condition.

In summary, I find that the tenants have not proven their case for the following reasons:

1. More than one person had access to the rental unit
2. At least one person visited the unit and removed items
3. BT did not make reasonable efforts to retrieve all their personal belongings
4. The landlord allowed the items to remain for almost five months thereby suffering a loss of rental income.
5. The items were unsanitary and posed a threat of infestation
6. The items removed were worth little to nothing

For the above reasons, I dismiss the tenants' application.

Conclusion

The tenants' application is dismissed.

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 02, 2011.

Residential Tenancy Branch