



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this month to month tenancy started on November 01, 2011. Rent for this unit was \$1,375.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$650.00 on October 30, 2011.

The tenants testify that they received a 10 Day Notice to End Tenancy from the landlord on December 05, 2011. The tenants later revised this to having received the Notice on December 04, 2011. The tenants agree they did not dispute the notice as they intended to move from the rental unit. The tenants testify they started to move their belongings from the unit on December 01 and continued to move items each week. The tenants testify that they spoke to the landlord about moving from the unit by December 15, 2011 and told the landlord he could keep their security deposit to cover the rent from December 01, to December 15, 2011. The tenants' state they agreed on this date as they considered that they had paid rent up to this date.

The tenants testify that they left the unit for a few hours on December 14, 2011 and when they returned around 7.00 p.m. they noticed the landlord and at least six other people where in their unit moving the tenants remaining belongings into the garage. The tenants state they called the police who then attended at the rental unit. The tenants testify that the police helped the tenants and landlord reach an agreement that the landlord would pay the tenants \$100.00 to stay in a hotel for the night as the landlord did not want to put their belongings back in the house.

The tenants testify that the landlord and his friends removed two beds and bedding, a couch, two television sets, the tenants food had been placed in the garbage cans, the tenants medicines had been removed along with personal paperwork, items were removed from the bathroom and an end table was removed. The tenants testify that they attempted to find a hotel room with the \$100.00 but this was an insufficient amount so the tenants returned to the unit to get their bedding to take to their new house.

The tenants testify that they returned the next day to remove the reminder of their belongings with assistance from the landlord. They found their medication had been put into four different places, the landlord had not return their paper work, there was an old machete missing, the landlord had placed their belongings on a greasy garage floor which damaged their bed and bedding. The tenants state the food was ruined as it was covered in oil because the lids had come off the oil container, the televisions sets had

been pulled from the cable vision cords causing damage to the televisions, a spot light was broken and a four pack of bulbs was missing, a cutlery set was missing and parts from a Betty Crocker mixer set were missing. The tenants state they now have their beds and have washed oil stains from their bedding. The tenants now seek to recover the sum of \$133.50 for their spoiled food items; \$50.00 for the missing cutlery set; \$50.00 for the damaged televisions sets; \$20.00 for the broken spot light; \$6.00 for the missing bulbs and \$30.00 for the missing parts form the Betty Crocker set.

The landlord testifies that he went to the unit on December 01, 2011 to collect rent and the tenants advised the landlord that they would not be paying rent and would be vacating the unit. The landlord testifies that he went back to the unit on December 02, 2011 to ask for the rent again and as the tenants still did not pay rent the landlord served the tenants with a 10 Day Notice to End Tenancy on December 02, 2011 in person. The landlord states this Notice has an effective date of December 12 and the Notice has been provided in evidence. The landlord testifies that the tenants informed the landlord that they would move from the rental unit on December 12, 2011 and agreed the landlord could show the unit to prospective tenants. The landlord states the tenants said the landlord could deduct the rent from their security deposit, however the landlord states he did not agree to this.

On December 05, 2011 the landlord states he had a viewings arranged for the unit and managed to show the unit to three or four prospective tenants. At that time the landlord testifies he made a note of what furniture the tenants had in the unit. The landlord testifies he managed to re-rent the unit for December 15, 2011 and informed the tenants of this to confirm that they would be moving out on December 12, 2011.

The landlord testifies that on December 11, 2011 he drove by the rental unit and saw the tenant moving some belongings from the unit. On December 12, 2011 the landlord testifies that he returned to the unit but the tenants were not there. The landlord states he looked through the windows and saw the tenants had moved substantially all there furniture from the unit. The landlord testifies that the downstairs tenant also informed the

landlord that he had seen the tenants moving out on that day. The landlord testifies he called the tenants and asked for the keys to the unit back and was told "whatever" and the tenants hung up

The landlord states that based on these established grounds that the tenants had moved from the rental unit on the December 14, 2011 the landlord assumed the tenants had abandoned the remainder of their belongings and the landlord states he entered the property and changed the locks. The landlord testifies that he started to clean the property and removed the remainder of the tenants' belongings into the garage. The landlord agrees that the tenants arrived at the unit and called the police. The landlord testifies that they police heard both parties' statements and the tenants and landlord came to the agreement that the landlord would give the tenants \$100.00 from their security deposit and the tenants would return the next day to remove the remainder of the belongings.

The landlord testifies that 45 minutes later he received a call from the downstairs tenant who advised the landlord that the tenants were breaking into the garage. The landlord testifies that he returned to the unit and found the tenants had broken into the garage and were loading some of their belongings onto their truck. At that time the landlord states it was raining and the tenants did nothing to protect their belongings from the rain. The landlord disputes the tenants claim that the landlord had placed their belongings onto oil in the garage. The landlord testifies that the garage had not been used to park a vehicle for over five years and there was no oil present in the garage. The landlord testifies that the following day the tenants' returned to the unit and removed the remainder of their belongings. The landlord testifies that at this time the tenants did a thorough walk through of the unit and garage to ensure they had collected all of their belongings. The landlord testifies that the tenants were satisfied that they had removed everything from the unit and garage.

The landlord testifies that he did not dispose of any item as claimed by the tenants, food items were placed in plastic bags and not in garbage bins. The landlord testifies that

there was no damage caused to the television sets and the cords were wrapped carefully around the televisions. The landlord states he does not recall seeing a spotlight.

The landlord argues that the tenants did not pay any rent and a landlord cannot use the security deposit against unpaid rent until the end of the tenancy.

Analysis

As this matter deals with the tenants' application for a Monetary Order for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimants have met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
- Proof that the claimant followed S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I further find in this matter that when the tenants' evidence is contradicted by the landlord, the tenants' will need to provide additional corroborating evidence to satisfy

the burden of proof. In this instance I find the landlord agrees he did remove the tenants belongs from the unit to the garage but disputes that there was oil in the garage. The tenants have provided no corroborating evidence to show their beds and bedding were damaged by oil.

The landlord agrees he removed the reminder of the tenants' belongings but argues the tenants checked the garage and unit and were satisfied they had recovered all their belongings. The tenants argue there were some items missing however they have provided no corroborating evidence was to the existence of these missing items or their actual value.

The landlord agrees he did remove the tenants' food from the unit but argues he placed this food in plastic bags and the tenants removed it. The tenants' argue that the landlord placed their food items in bins and it was left covered in oil. The tenants have provided no corroborating evidence of this, such as photographic evidence to support their claim.

The tenants argue that the landlord damaged their two television sets and the landlord disputes this. The tenants have provided no corroborating evidence to support this section of their claim.

While I accept that the landlord should not have entered the tenants' suite and removed the tenants belongings I have insufficient evidence to support the tenants claim for damage or loss to these belongings. Consequently, I find the tenants have failed to meet the burden of proof in this matter and the tenants claim for money owed or compensation for damage or loss is dismissed.

As the tenants have been unsuccessful with their claim I find the tenants must also bear the cost of their filing fee.

Conclusion

The tenants claim is dismissed in its entirety without 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*.

Dated: March 05, 2012.

Residential Tenancy Branch