



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNDC, RPP
For the landlord: MNDC, MND, FF

Introduction

This was the reconvened hearing dealing with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The original hearing dealing only with the tenants' application was adjourned due to the landlord's contention that he had not received the tenants' application in a timely manner in order to prepare for the hearing. Additionally, the landlord stated that he intended on filing for his own dispute resolution.

Subsequently the landlord did file his application, which was considered at the adjourned hearing.

The tenant applied for a monetary order for the value of his personal possessions as well as an order requiring the landlord to return the tenant's personal property.

The landlord applied for a monetary order for money owed or compensation for damage or loss and for damage to the rental unit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have only reviewed and considered relevant evidence submitted in a timely manner prior to the hearing in accordance with the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue 1-The landlord submitted photographic evidence of the rental unit. When questioned, the landlord stated he did submit the photos to the tenant by posting the photos on wall of the tenant's social networking site.

I therefore have not considered the landlord's photographic evidence as the evidence was not properly submitted to the tenant, in accordance with the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and an order requiring the landlord to return their personal property?

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on April 24, 2011, ended on January 31, 2012, and monthly rent was \$700.00.

I heard testimony that the parties were former friends and as such, there was no written tenancy agreement or security deposit required of the tenants.

Tenants' application:

The tenant stated that although he made a request for a monetary order, he really was interested only in a return of his personal property, due to the sentimental value attached to many items.

The circumstances surrounding the tenants' personal property being left in the rental unit at the end of the tenancy were due to the tenant's truck breaking down when making and completing the final move, according to the tenant.

The tenant stated that he made many attempts to contact the landlord to arrange a time to pick up the personal property after he found a new truck to remove the personal property. The tenant stated that on the third attempt, he was informed by the landlord's girlfriend that the landlord would not release the property until the tenant paid \$1000.00.

The tenant stated he has tried to work out the issues with the landlord, but after their friendship fell apart, he was not able to do so.

The tenant stated that the personal property included a stereo, television, household items, his sister's ashes, his father's Elk regalia, family antiques and a leather jacket.

In response, the landlord stated the tenant left his garbage in the rental unit for five weeks and that during this time, he did not receive a call from the tenant.

The landlord stated that the tenants' personal property is in storage.

Landlord's application:

The landlord's monetary claim is in the amount of \$7630.00, which includes loss of rental income for three months in the amount of \$2100.00, replacement of furniture, carpet and flooring in the amount of \$4000.00, plumbing costs of \$515.00, dump runs of

\$80.00 and \$60.00 for gasoline and \$375.00 for the costs of two workers to clean the rental unit.

The landlord stated that he has lost rental income for the last three months due to the condition of the rental unit due to the tenants, as he still has repairs to perform.

As to the plumber's bill, the landlord submitted that the tenant unplugged the heat tape to the water line while the temperatures fell to -32 degrees, which led to pipe damage. The landlord submitted an April 7, 2012, bill from a plumber.

The landlord confirmed that there was no move-in or move-out condition inspection report or receipts or invoices for the repair, clean-up or dump runs incurred by the landlord.

The tenant responded, saying that rental unit was garbage filled when they moved in and that the rental unit should be condemned.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Tenants' application-

In this case, I find the tenant has breached the Act by failing to remove his personal property from the rental unit.

The Residential Tenancy Branch Regulations deal with disposal of a tenant's personal property by the landlord at the end of the tenancy. The landlord may gather the personal property of the tenant at the end of a tenancy and place the items in storage for a period of 60 days; however the landlord is required to keep an inventory of the items.

The landlord stated that he still had the tenants' personal property in storage and as such, I find that the tenants are entitled to recover their personal property. However, I

find that the landlord is entitled to be reimbursed his reasonable costs for storing the items and that the tenants must pay the reasonable storage costs to the landlord.

As I find that the tenants are entitled to retrieve their personal property, I order the parties to arrange a mutually agreed upon time to enable the tenants to retrieve their personal property.

I additionally order the tenant to compensate the landlord for his reasonable costs of storage prior to retrieving his personal property. Failing that the landlord may dispose of the tenants' personal property in accordance with the Act and regulations.

If the parties cannot agree upon what amount would be reasonable storage costs, either party is at liberty to make an application for dispute resolution seeking a decision on that amount.

As the tenant admitted that he was not seeking a monetary order, but rather retrieval of his personal property, I have not considered his request for a monetary order. However if the landlord does not allow the tenants access to their personal property at the mutually agreed upon time and date, the tenants may reapply for a monetary order.

Landlord's application-

The Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy and at the end of the tenancy to complete a move-out condition inspection.

In this case, the landlord did neither. In the absence of a condition inspection report, I find there to be insufficient evidence to meet the burden of proof establishing the condition of the rental unit at the start of the tenancy or that the tenants damaged the rental unit or left the rental unit unclean.

Additionally, the landlord has submitted insufficient evidence that he incurred a loss as he provided no receipts or other documentation, other than for a plumbing bill.

As to the plumbing bill, I find that the repair which occurred in the third month after the tenancy ended could not be attributed to any neglect of the tenants due to the delay. Further, the landlord produced no evidence that the tenants unplugged the heat tape and caused the frozen water line. I find it reasonable to accept the tenant's argument that the weather was so extreme during this period of time, that all surrounding properties had issues with their frozen water pipes.

As I find the landlord submitted insufficient evidence to prove his claim for damage or loss, I dismiss his application, without leave to reapply.

As I have dismissed the landlord's application, I decline to award him recovery of the filing fee.

Conclusion

The tenants' application for a return of his personal property is granted. The parties are ordered to arrange a mutually agreed upon time so that the tenants may retrieve their personal property.

The tenants are at liberty to make an application for a monetary order should the landlord fail to provide access to the tenants for retrieval of their personal property.

The tenants are ordered to compensate the landlord his reasonable costs of storage.

The landlord's application is dismissed, 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: May 22, 2012.

Residential Tenancy Branch