



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNSD, LRE

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking the return of the tenant's property and compensation for loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

- Is the tenant entitled to the return of property still held in the landlord's possession?
- Is the tenant entitled to monetary compensation under section 67 of the *Act* for lost property that was under the landlord's control?
- Is the tenant entitled to an order for a refund of double their security deposit?

Background and Evidence

This tenancy began on December 1, 2001 and the rent was \$750.00. A security deposit of \$375.00 was paid at the start of the tenancy. There was a previous hearing and the tenancy ended with an Order of Possession effective 1:00 p.m., November 30, 2012.

Submitted into evidence were copies of invoices and estimates, copies of communications and photographs. The parties confirmed receipt of the evidence.

The parties testified that, although the tenant had vacated the rental unit on November 30, 2012, some items belonging to the tenant still remained on the property in some of the outbuildings and garage.

The tenant testified that they were given permission by the landlord to leave the items to be picked up on the following day, which was December 1, 2012.

The landlord denied that this permission was ever given.

The tenant testified that, when they returned to retrieve the equipment and materials, the following day, they were prohibited from accessing their property by associates of the landlord and were told to leave.

The tenant testified that the landlord had illegally confiscated their belongings and refused to surrender these. The tenant is claiming compensation for the value of the missing items. Including the following:

- \$1,249.25 for extra siding awaiting return for refund
- \$1,800.00 for cedar boards
- \$600.00 for a cedar archway
- \$600.00 for 4 used planks
- \$250.00 for a used Moffatt stove
- \$300.00 for a chain block
- \$200.00 for a table saw
- \$400.00 for 2 new windows, 3 boxes of nails and used tarps
- \$600.00 for a used Ford transmission

The total amount of the tenant's claim for the possessions was limited to \$5,000.00, which is being sought.

The tenant testified that the landlord was given their written forwarding address on December 13, 2012, but did not send a refund of the deposit.

The tenant is claiming the return of double their security \$375.00 security deposit they paid in December 2001.

The landlord stated that, although the order of possession indicated that the tenancy was being ended at 1:00 p.m. on November 30, 2012, she had permitted the tenants extra time to continue removing their possessions until 10:00 p.m. that night in order to clear the house. The landlord testified that materials, equipment and personal possessions of the tenant were left. The landlord testified that the tenants then arrived unannounced the next morning, on December 1, 2012, to continue removing the remaining materials and personal possessions on the grounds and out buildings of the

property, that they had accumulated over the eleven-year tenancy. The landlord testified that she pointed out to the tenants that the November 30, 2012 deadline had passed and new renters had already moved in. The landlord admitted that she told the tenants that they must leave. The landlord admitted that all of the remaining property belonging to the former tenants was then confiscated because it was necessary to clean up the mess left behind for the new renters.

The landlord testified that they were operating under the belief that the landlord was legally entitled to take possession of the unit and keep whatever property remained on the premises after the tenancy ended at 1:00 p.m. on November 30, 2012. The landlord's written testimony included the statement:

"My understanding was that at 1pm on November 30, 2012 my rental unit and whatever was left at that point was belonging to me."

(Reproduced as written)

The landlord testified that some of the tenant's belongings were disposed of, others were taken to be auctioned off on December 3, 2012 and the remainder of the items are still located on the property, including:

- Cedar boards
- Cedar archway
- Used Moffatt stove
- Table saw

The landlord stated that she is willing to allow the tenant to arrange to pick up the above items that are still stored on the premises.

The landlord testified that the siding, for which the tenant was claiming \$1,249.25, was auctioned off a few days after the tenancy ended and only brought \$35.00 and the 4 used planks for which the tenant was claiming \$600.00 only brought \$243.50. The landlord stated that the tarps were of no use and were sent to the landfill and the new windows were also likely discarded or donated. The landlord stated that she did not know what happened to the tenant's 3 boxes of nails, the chain block and the transmission.

The landlord stated that she did not agree with the values that the tenants assigned to the items in their monetary claim.

The landlord acknowledged that the tenant had provided their written forwarding address but none of their security deposit was returned to the tenant because the clean-up cost exceeded the value of their security deposit.

Analysis: Compensation For Loss Of Property

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that, if a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator authority to determine the amount and order payment under these circumstances. The party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the following test:

1. Proof that the damage or loss exists,
2. Proof that this damage/loss was due to the a violation of the Act or agreement,
3. Verification of the actual amount required to compensate or rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by minimizing the loss.

In this instance, the burden of proof is on the tenant, who 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 landlord. Once that has been established, the claimant must then provide evidence of the actual monetary value of the loss or damage.

Section 26(3) of the Act states that a landlord must not:

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

Section 24 (1) of the Regulation deals with "abandoned" property and provides that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or the tenant leaves the personal property on residential property where the tenant has not occupied or paid rent for a continuous period of one month and for which they have not paid rent, or from which the tenant has removed substantially all of his or her personal property.

However, under section 24(2) of the Regulation a landlord cannot consider the tenant's possessions abandoned unless:

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property. (my Emphasis)

Even in the case where a tenant has suddenly vacated the unit without notice and abandoned the possessions, a landlord is still required to comply with section 25 of the Residential Tenancy Regulations. The landlord is required to 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 and keep a written inventory of the property.

In this case, I find that the tenants did not abandon their property and made express representations that they intended to retrieve their possessions and, in fact, tried to pick them up the following day. I find that, by denying the tenants access to retrieve all of the property belonging to them, the landlord had violated the Act by confiscating the tenant's personal property.

Section 30 of the Residential Tenancy Regulation states that, during the storage of any possessions left by the tenant, the landlord owes a duty of care to the tenant and must exercise due diligence and caution as required by the nature of the items, to ensure that the property is not damaged, lost or stolen. I find that, the landlord was wrong in assuming the right to take over the tenant's property. I find that the landlord's treatment of the tenant's possessions including using, selling some or discarding items, was not consistent with the duty of care obligations specified in the Regulation.

Having found that the tenant met elements 1 and 2 of the test for damages, I find that the tenant must also satisfy element 3 of the test by proving the value of the loss to support the amount of damages being claimed. I find that the tenant's descriptions and photos of the missing items, along with the documentary evidence they submitted, supported the tenant's monetary claim and I accept the stated values of the items listed.

In regard to the value of the confiscated items, I find that the tenant is entitled to be compensated in the amount of \$3,149.25, comprised of the following:

- \$1,249.25 for extra siding awaiting return for refund
- \$600.00 for 4 used planks
- \$300.00 for a chain block
- \$400.00 for 2 new windows, 3 boxes of nails and used tarps
- \$600.00 for a used Ford transmission

Analysis: Return of Property

I find that the tenant is entitled to retrieve any of their items that are still on the premises or in the possession of the landlord and the parties agreed, during the hearing, that they would make this exchange. Therefore, I order the landlord to make arrangements for the tenant to have access to the following property for removal and any other property found to belong to the tenant:

- Cedar boards
- Cedar archway
- Used Moffatt stove
- Table saw

Analysis: Security Deposit

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

However, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

The landlord must either make an application seeking monetary compensation or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In this instance I find that the landlord did not obtain the tenant's written permission to retain the deposit, did not make a successful application to keep the deposit and failed to return the tenant's security deposit within 15 days.

Accordingly, I find that the tenant is entitled to double the \$375.00 security deposit amounting to \$750.00, plus interest of \$14.26, for a total refund of \$764.26.

Based on the evidence before me, I find that the tenant is entitled to total monetary compensation of \$3,963.51, comprised of \$3,149.25 for loss of property, \$764.26 for double the security deposit and interest and the \$50.00 cost of the application. I hereby

grant a monetary order in favour of the tenant for \$3,963.51. This order must be served on the landlord and may be filed in Small claims Court and enforced as an order of that Court if not paid.

Based on the evidence before me, I find that the tenant is entitled to retrieve their remaining possessions that are still on the premises and I hereby order the landlord to relinquish possession of the tenant's personal property without undue delay, failing which the tenant is at liberty to reapply for compensation.

Conclusion

The tenant is successful in this application and is granted a monetary order for loss of property and a refund of double the security deposit and an order that the landlord return the tenant's property.

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: February 25, 2013

Residential Tenancy Branch

