



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC, LAT

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, order of possession for the rental unit and an order authorizing the tenant to change the locks to the rental unit.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence was discussed. The landlords said that they left their evidence at the address listed by the tenants on their application for dispute resolution. The tenants said that they did not receive it. I have accepted the landlords' submissions into evidence as I find they served the documents in a manner complying with section 88 of the Act.

Additionally, although at the time of the hearing I had not received all the tenants' evidence, I did receive it the same day, after the hearing. I was able to view all the tenants' evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order, order of possession for the rental unit and an order authorizing the tenant to change the locks to the rental unit?

Background and Evidence

I heard undisputed evidence that the male tenant and another female tenant were the original tenants of the landlords. Those parties were in dispute resolution on December 7, 2012, wherein the landlords were granted an order of possession for the rental unit, effective December 16, 2012.

The landlords said that the order of possession was served on the tenants and the landlords said that the male tenant (DS) has not lived in the rental unit since that time, due to the order of possession for the rental unit and the fact that the DS is under an arrest warrant. The landlord said that due to the physical threats against the safety of the landlords, DS is prohibited from being around the property or the landlords.

The landlord said the original female tenant is no longer residing at the rental unit; however unbeknownst to the landlords, the present listed female tenant, JD, moved into the rental unit in mid December after the original female tenant vacated.

According to the landlords, JD is not a tenant of theirs and they allowed her to live in the rental unit for a short while until she found another place to live. According to the landlords, JD has not lived in the rental unit in over two months, and they accepted rent from her on a use and occupancy basis.

As to the tenants' monetary claim, they are seeking the return of their personal property or compensation for those items, as follows: electronic key pad lock, \$260, 3 pellets guns, \$545, security cameras, \$3200, wiring for cameras \$1200, an outlet, \$20, plants and accessories, \$340, plants \$100, broken boxes, \$150, shelf, \$100, pad lock and hinge, \$10, and insulation and drywall, \$150.

In support of their claim, JD said that the landlords have entered their suite illegally and removed or destroyed the items mentioned. JD said that the landlord took down their security cameras and took possession of them.

JD submitted that the landlord has refused them entry to the suite in order to retrieve their belongings and has refused to return the items of personal property.

As to the drywall, the tenant submitted that it was necessary to patch one of the walls due to its condition and was needed by another occupant.

In response, the landlords submitted that DS did not have permission to wire the house and install security cameras; due to this, the landlord submitted that he disabled the cameras and removed the wiring, but has not damaged or destroyed the items. The landlord also submitted that DS began living in the rental unit again, after he was ordered to stay away, unbeknownst to him. During this time, according to the landlord, DS padlocked an inside bedroom door, which required that the landlord remove the lock.

The landlord said that the police confiscated the firearms, having them in their possession at the present.

The landlord submitted that they had to remove drug paraphernalia from the rental unit and that the plants referred to by the tenants was marijuana plants.

As to the items of personal property, other than the plants and the firearms, the landlord said that JD has texted them numerous times to be able to retrieve her belongings, which they allowed; however JD would either come and stay just a few minutes, retrieving her clothes, or would not show up at all. Other times the tenant wanted to meet past 7:30, which the landlords refused due to work schedules.

The landlords said that JD would never pick up the boxes they had packed, and that the landlords finally put all their belongings on a covered patio, where they were the day of the hearing.

Analysis

As to the tenants' request for an order of possession for the rental unit and an order authorizing the tenant to change the locks to the rental unit, I find the issue has previously been decided upon by the Decision and Order of Possession issued by another Arbitrator on December 7, 2012, against tenant DS and the tenant at the time. I find that JD has failed to establish that she was ever a tenant in the rental unit, and had the status of occupant.

As the landlords are entitled to the possession of the rental unit as decided in the December 7, 2012, I cannot re-decide the issue of possession of the rental unit as I am bound by this earlier Decision, under the legal principle of *res judicata*. As the landlords are entitled to the possession of the rental unit, I likewise am unable to allow the tenants to change the locks to the rental unit.

As to the applicants' request for compensation for their personal property, in a claim for damage or loss under the Act or tenancy agreement, the claiming party, the respondents/tenants in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find the landlords provided clear and consistent testimony and submitted credible written evidence that they have provided numerous opportunities for JD to retrieve all the personal property in question, other than the firearms seized by the police and the plants, which according to the landlords appeared to be marijuana plants, and that she has failed to take advantage of those opportunities.

I therefore find that the tenants failed to take all reasonable steps to minimize their loss, step 4 of their burden of proof, and their claim fails.

I additionally find the tenants failed to submit proof of the value of the items of personal property.

Due to the above, I find the tenants have submitted insufficient evidence to support their application, and I therefore dismiss their application, without leave to reapply.

At the hearing, the parties agreed that JD could attend the rental unit for the purposes of retrieving their personal property, the Saturday following the hearing.

Conclusion

The tenants submitted insufficient evidence to support their application and it 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: April 18, 2013

Residential Tenancy Branch