



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that he received a copy of the tenant's dispute resolution hearing package sent by the landlord by registered mail on April 19, 2013. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should an order be issued against the landlord to return the tenant's personal property?

Background and Evidence

This periodic tenancy for one bedroom in a multi-bedroom rental building commenced on May 1, 2012. The landlord did not share these living quarters with the tenant, nor did he share the kitchen or bathroom with the tenants in this building during this tenancy. Monthly rent was set at \$380.00, payable in advance by the first of each month. Both parties agreed that the tenant advised the landlord at the end of this tenancy that the landlord could keep the tenant's \$190.00 security deposit paid on or about April 22, 2012.

The parties agreed that the tenant provided oral notice to the landlord on or about April 1, 2013, that he would be vacating the rental unit by April 15, 2013, as the tenant was planning to explore a job opportunity in Alberta.

The tenant testified that he had an oral agreement with the landlord to let him return in a few weeks if his job opportunity did not turn out as planned and that the landlord agreed to retain his personal property until the tenant had someone forward it to the tenant or until he returned to the rental property to either resume his residency there or remove his belongings from the rental property. The tenant provided the following description of this arrangement in his written evidence.

...I let my landlord know that I was going to be out for two weeks and that I was not sure if I was going to be able to come back to pick up the rest of my stuffs still remaining in the room, but if that were the case, I was going to send a person in my behalf to do it, as I still left some values and important things, also as a verbal agreement, I let my landlord keep the money of my deposit for the amount of \$190.00 CAD dollars...

The tenant said that the landlord agreed to safeguard his belongings and potentially continue this tenancy even though the tenant told the landlord that he could not pay his April 2013 rent. The tenant said that when he returned to the property on April 25, 2013, his rental unit was no longer locked and his belongings had been removed. He testified that the landlord did not fulfill his oral commitment to safeguard his personal property. The tenant applied for a monetary Order of \$1,800.00, his estimated value of the possessions he lost as a result of the landlord's failure to exercise care in keeping his possessions. Although the tenant did not have photographs, receipts or witnesses to attest to the contents of his rental unit at the end of this tenancy, the tenant testified that he had approximately \$200.00 in cash in the rental unit (in both Canadian and a foreign currency), as well as a desk, drawer, chair and a crystal table that went missing by the time he returned to retrieve his possessions on April 25, 2013. He also testified that he lost personal items including a diploma, certificates from his home country, clothing and electronics. He claimed that the landlord took the most valuable of his possessions and discarded the remainder as garbage.

The landlord provided a very different account of the end of this tenancy. Although he provided no written evidence for this hearing and did not produce any witnesses, the landlord gave sworn testimony that he made no oral agreement with the tenant to either continue this tenancy or safeguard the tenant's possessions. Both parties agreed that the tenant gave the landlord his keys to the rental unit when he left for Alberta on April 1, 2013. The landlord testified that he asked the tenant for his April 2013 rent at that time and made no commitment to continue the tenancy or to reinstate the tenancy after

the tenant returned his keys to the landlord. The landlord testified that he told the tenant if he wished to return to the rental unit he would have to pay his rent for April 2013, which did not happen.

The landlord said that within a week or so of the tenant's leaving for Alberta, another tenant in the building, Andrew, a friend of the tenants, showed the landlord a text message in which the tenant agreed to let Andrew knock down walls in the rental property and to retain any possessions of value remaining from the tenant's rental unit. The tenant gave sworn testimony confirming that he had given Andrew permission to remove walls and take things from the tenant's rental unit to keep them safe. However, he maintained that when Andrew entered his rental unit Andrew discovered that anything of value had already been removed, presumably by the landlord who had the key to enter the rental unit. The landlord denied having removed anything of value from the tenant's rental unit.

The landlord also testified that locks were removed and walls were taken down as a result of an inspection undertaken by the municipality. On this note, the tenant and his witness stated that the municipality had discovered that the landlord should not have been renting this property to so many tenants and required the landlord to take corrective action. The landlord testified that any goods removed from the tenant's rental unit was either garbage or was taken by unknown persons, presumably with the agreement of the tenant and his friend, Andrew.

The landlord gave undisputed sworn testimony that the tenant did not pay any rent for April 2013, despite giving insufficient notice to end this tenancy. The tenant also agreed with the landlord's claim that the tenant told the landlord that he could keep the tenant's security deposit as partial compensation for the short notice given by the tenant and the tenant's failure to pay rent for April 2013. The landlord considered the tenancy at an end when the tenant returned his keys and told him that he was moving to Alberta. When Andrew shared the tenant's text message with him, the landlord believed that there was an agreement between Andrew and the tenant to remove anything that the tenant wished to keep from his personal belongings.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. 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. In this case, the tenant bears the burden of proof with respect to his claim for losses arising out of this tenancy.

The parties provided conflicting evidence with respect to how this tenancy ended. The differing views as to the arrangements that had been made to end this tenancy reinforce the importance of ending a tenancy in accordance with the *Act*. I find that the tenant did not provide written notice as required by the *Act* to end his tenancy. The tenant failed to pay his April 2013 rent as requested. He cleared some of his belongings from the rental unit and told the landlord that he was expecting to move to Alberta. The tenant also returned his keys and told the landlord that he could keep his security deposit. Each of these actions, and in particular the return of his keys and his agreement to let the landlord retain his security deposit are ones that are taken at the end of a tenancy and not taken if a tenancy is to continue. I find these actions are inconsistent with the tenant's claim that the landlord made an oral agreement to continue the tenancy and let the tenant return to the premises without having paid rent for April 2013, if his job prospects in Alberta did not lead to his remaining there. There is also undisputed evidence that the tenant agreed to let Andrew remove walls and keep remaining items in the rental unit when he left for Alberta. Based on a balance of probabilities, I find that the landlord had reasonable grounds to consider that this tenancy ended when the tenant returned his keys and agreed to let the landlord keep his security deposit. Both of these actions are characteristic of a tenant ending a tenancy ie he was in the process of moving to Alberta and without paying his April 2013 rent.

While I consider the tenancy ended as of the date of the transfer of the keys to the landlord, the *Act* and the *Regulation* established under the *Act* attach responsibility to the landlord to safeguard a tenant's possessions of value even if the tenant has failed to provide written notice to end the tenancy.

Section 65(1)(e) of the *Act* establishes that "personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned." In this case, the landlord testified that he has not retained any of the tenant's personal property and maintained that anything that he was aware of that remained after the tenant vacated the premises was debris, garbage or no value. However, the landlord also provided inconsistent and confusing evidence with respect to the circumstances surrounding the removal of the locks on the bedroom doors in this rental property and the removal of walls in that portion of the rental property. At one point, he asserted that responsibility for removal of items from the tenant's bedroom may have resulted from Tenant Andrew's actions, agreed to by the tenant. At other times during the hearing he said that the locks had to be removed because of orders he had received from the

municipality. Once the locks were removed, the landlord accepted no responsibility for the safekeeping of the tenant's belongings, which he claimed may have been taken by anyone.

During the hearing, the tenant attempted to connect two potential witnesses to this hearing. He maintained that these witnesses, other tenants in this building, would be familiar with what happened when the lock was removed from his rental unit and could attest to what was contained in his rental unit after he left the property. Although we attempted to connect with both of these potential witnesses, only one was available. This witness confirmed that the locks were removed from all of the rooms because some of the tenanted rooms had not been approved by the municipality. He confirmed that the tenant had left some of his belongings in the rental unit after he left for Alberta. However, he testified that he had only been in the tenant's room once or twice and other than clothes, he could not say which items remained after the tenant left the rental unit. He testified that his knowledge of the belongings that went missing was limited to what the tenant had told him. Although I accept that some of the tenant's personal possessions, particularly clothing, remained at the rental unit after the tenant left for Alberta in early April 2013, I do not find the information provided by the tenant's witness of much assistance in determining what went missing that was left in the care of the landlord at the end of this tenancy.

In considering the tenant's claim, I first note that the landlord is responsible for safeguarding items of value left behind at the end of a tenancy. Since the landlord did accept the keys to the rental unit from the tenant and had sole access to the rental unit as of April 1, 2013, I do not find that he can transfer responsibility to other tenants in the building, the municipality or some unnamed members of the public for taking the tenant's belongings that were left accessible due to locks and walls being removed. Under these circumstances, I find that the landlord had a duty of care to safeguard items of value left behind by the tenant at the end of this tenancy that were missing when the tenant returned by mid-April 2013.

While I find that the landlord did not exercise his duty as a landlord to safeguard the tenant's personal possessions that remained behind at the end of this tenancy, I cannot order the landlord to return these items pursuant to section 65(1)(e) of the *Act* as he has testified that he does not possess any of these belongings. Under these circumstances, the sole remedy available to the tenant is his application for a monetary award for losses arising out of this tenancy. However, as noted above, the burden of proving the loss rests with the claimant, in this case, the tenant.

The tenant has provided very few details regarding the items he maintains were lost while under the landlord's care. As the landlord noted at the hearing, the tenant produced no receipts, photographs, nor eyewitness accounts attesting to the contents of the premises. While the tenant provided some written evidence, the nature of this evidence was vague and did not provide estimates of when these items were purchased nor did they attach any value to them. The landlord noted that the tenant provide conflicting testimony as to the age of some of these items. The landlord also asserted that many of these items were second-hand purchases that may have had little real value by the end of this tenancy.

I find on a balance of probabilities that the tenant likely incurred a loss of some items as a result of the landlord's failure to exercise his responsibility as a landlord to ensure that items of value that remained in the rental unit after the tenant vacated the premises were stored securely and made available upon the tenant's return in mid-April 2013. In the absence of more compelling and detailed evidence from the tenant or his witness, I limit his eligibility to a monetary award to \$250.00. I recognize that this is a somewhat nominal and arbitrary amount designed to compensate the tenant for the loss of clothing and other personal possessions that likely remained in the rental unit in the landlord's care when the tenant handed the landlord his keys to the rental unit. In coming to this determination, I find that the tenant's witness could only confirm that the tenant left some clothing behind at the end of this tenancy and was uncertain as to other items of value that went missing while under the landlord's duty of care.

I have also taken into account the tenant's return of the keys and the security deposit to the landlord and his admitted removal of some items of value before he left for Alberta. I also find it most unlikely that the landlord agreed to keep the rental unit available for the tenant should the tenant decide to return from Alberta and resume his tenancy without receiving any rent payment for April 2013. Although the landlord has made no application for dispute resolution for unpaid rent for April 2013 due to the tenant's failure to provide adequate notice to end his tenancy, the tenant has not denied the landlord's claim that he did not pay rent for that month. The tenant's agreement to forfeit his security deposit was an apparent acknowledgement that the tenant had not complied with the *Act* in failing to pay rent for April 2013.

In accordance with their mutual agreement and section 38 of the *Act*, I confirm that the landlord is authorized to retain the tenant's \$190.00 security deposit to partially offset the tenant's failure to pay rent for April 2013. In considering the tenant's application for a monetary award, I find that the tenant continues to owe the landlord for at least one-half of the rent for April 2013, an amount of \$190.00. In addition, I accept the landlord's undisputed testimony that he incurred costs in cleaning up the debris and garbage that

remained after the tenant ended this tenancy. In considering the tenant's application for a monetary Order, I note that the tenant did not dispute the landlord's testimony that the tenant left items behind at the end of this tenancy that had to be discarded and were not of value. For this reason, I have also reduced the tenant's entitlement to a monetary award by an amount of \$60.00 for the clean-up and removal of debris and garbage by the landlord at the end of this tenancy.

I find that the tenant's entitlement to a monetary award of \$250.00 for the loss of personal possessions arising out of this tenancy pursuant to section 67 of the Act is offset by the tenant's admitted lack of payment of rent during April 2013 (\$190.00) and the clean-up costs of the landlord (\$60.00). Under these circumstances and in accordance with the offsetting provisions of section 72 of the Act, I issue no monetary Order to the tenant, as he has not established losses arising out of this tenancy that outweigh his obligations to the landlord arising out of this tenancy. In coming to this determination, I note that the landlord remains at liberty to apply for a monetary award if he believes that he is entitled to a further monetary award beyond that set out above.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$250.00. However, using the offsetting provisions of section 72 of the Act, I also find that the tenant's monetary award is to be offset by \$250.00 owed by the tenant to the landlord during this tenancy. As such, I issue no monetary Order to the tenant.

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 14, 2013

Residential Tenancy Branch

