



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

This application was originally filed by the tenant seeking a monetary order for money owed or compensation for damage or loss, an order for the return of his personal property by the landlord and recovery of the filing fee.

The initial hearing on the tenant's application was apparently adjourned on the landlord's request from December 3, 2012 to March 5, 2013. However, on March 5, 2013, only the tenant attended the adjourned hearing by conference call and the landlord was not in attendance.

The reconvened hearing was then held in the landlord's absence on March 5, 2013. In the decision dated March 7, 2013, the portion of the tenant's application seeking monetary compensation was dismissed with leave to reapply. The tenant was granted an order against the Landlord to return the itemized list of personal property.

However, on March 26, 2013, the landlord subsequently made an application seeking Review Consideration, based on the landlord's inability to attend the hearing due to circumstances that could not be anticipated and were beyond the respondent's control. The landlord was then granted a re-hearing scheduled for May 6, 2013.

Despite being granted a written decision informing them that the tenant's application was being re-heard on May 6, 2013, the landlord again failed to attend the second hearing.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order for the return of personal property?

Background, Evidence and Analysis

The tenant's testimony and evidence remains unchanged and I accept the following undisputed testimony. The tenant paid the landlord for a tenancy spanning the one-month period from October 1, 2012 to October 31, 2012. However, when the tenant left temporarily on October 15, 2012 and returned a week later to pick up his possessions, he found that the landlord had removed all of his property and he was not permitted on the premises.

The Tenant seeks a monetary order for \$3,000.00 for the loss of the following items consisting of:

- 1 Case Hydrostatic Lawn Tractor originally valued at \$1000.00,
- 1 Honda Lawn Tractor model 3810 originally valued at \$750.00,
- 1 5-Ton Chevy Truck with Hyab Crane originally valued at \$1,200.00,
- 1 1958 Morriss Minor Blue (Parts Car) originally valued at \$500.00,
- 1 1965 VW Dune Buggy originally valued at \$250.00,
- 1 1970's VW Convertible originally valued at \$250.00,
- 1 1970's VW Beetle originally valued at \$250.00,
- 1 20's Glass Craft Boat and Trailer originally valued at \$750.00,
- 6 VW Motors (@\$50.00 each) originally valued at \$300.00,
- 3 VW Transaxles (@\$150.00 each) originally valued at \$450.00,
- 1 Roll of green electric wire originally valued at \$200.00,
- 3 16" Tires on rims (@\$50.00 each) originally valued at \$150.00,
- Miscellaneous Morris Minor Parts originally valued at \$200.00,
- 1 16' Sangster Fibre Glass Boat and Trailer originally valued at \$200.00,
- 1 John Deere Yard Trailer for Lawn Tractors originally valued at \$100.00,
- 1 Shop Dust Collection System originally valued at \$100.00,
- 2 Crates of 5/16 Chain (@\$50.00 each) originally valued at \$100.00,
- 1 Pile of metal for \$100.00, 1 metal rack originally valued at \$100.00,
- 1 Storage tent originally valued at \$250.00,
- 1 Storage Tent frame originally valued at \$50.00,
- 1 Morriss Minor Shell originally valued at \$20.00,

- 1 Small Trailer Axle with 12" Tires originally valued at \$75.00,
- 1 Electrolux Vacuum originally valued at \$200.00,
- 1 Queen Sized Mattress originally valued at \$300.00,
- 1 London Drugs Medical Receipt valued at \$80.00,
- Food in the Refrigerator originally valued at \$150.00,
- Food left on Counter originally valued at \$50.00,
- Dishes and Utensils valued at \$20.00,
- 1 32" Television valued at \$100.00,
- 1 20 Liter pail of Universal Tractor Oil originally valued at \$100.00,
- 1 20 Liter pail of Diesel Engine Antifreeze originally valued at \$75.00,
- 1 20 Liter pail of Dextron
- 3 Transmission Oil originally valued at \$120.00,
- 1 20 Liter pail AW 46 Hydraulic Oil originally valued at \$100.00,
- 1 Antique Canvas Kayak valued at \$200.00,
- 80 Sets of Brake Pads (@\$5.00 each) originally valued at \$400.00,
- 1 Band Saw valued at \$75.00,
- 1 Table Saw valued at \$50.00,
- 1 Forny Welder valued at \$100.00,
- 1 Craftsman Welder valued at \$100.00,
- 1 36" Electric Fan originally valued at \$100.00,
- 2 Large Trailer Axles (@\$100.00 each) for \$200.00 and
- 1 Metal Welding table with castors valued at \$100.00.

The tenant testified that that the landlord illegally deprived the tenant of his personal property at the end of his tenancy. The Tenant stated that these items had been accumulated over the 20 plus years during his residency in the house and he is now seeking an order, either for the return of his personal property or for monetary compensation for the loss.

Analysis

I accept that the landlord and the tenant made an agreement for a tenancy for the month of October 2012. I accept the tenant's evidence that the landlord unilaterally terminated this tenancy by refusing the tenant access to the premises in October 2012.

In regard to the tenant's claim for monetary compensation for items confiscated by the landlord, I find that an applicant's right to claim damages from another party, is governed by section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

With respect to whether the landlord had violated their obligations under the Act to surrender property of a tenant at the end of the tenancy, I find that 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 tenant did not abandon their personal property and intended to retrieve their possessions.

I find as a fact that the tenant's property was not returned by the landlord. I further find that, by denying the tenants access to retrieve all of the property belonging to them, the landlord violated the Act.

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.

Having found that the tenant met elements 1 and 2 of the test for damages, I find that the tenant has also satisfied element 3 of the test by proving the value of the loss to support the amount of damages being claimed.

I find that the landlord's failure to provide evidence of a written inventory of all items remaining on the premises after the tenant left, in compliance with their duties under the Act, as well as the landlord's choice not to attend this re-hearing to give testimony, compels me to rely solely on the tenant's evidence. Accordingly, I accept as a fact, the tenant's uncontested list of missing items and their values. I find that the monetary claim of \$3,000.00 is supported by the evidence provided.

On this basis, I grant the tenant a monetary order against the landlord in the amount of \$3,050.00, comprised of \$3,000.00 in damages for wrongfully confiscated items and the \$50.00 cost of the application. This order must be served on the landlord and may be enforced as an order through Small claims court if it remains unpaid.

Conclusion

The Tenant is granted a monetary order in compensation for the personal property found to be wrongfully confiscated by the landlord..

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, 2013

Residential Tenancy Branch