



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, LRE, FF

Introduction

The tenant has applied requesting compensation in the sum of \$23,150.00 for the loss of personal property and an Order for return of personal property, plus the \$100.00 filing fee.

Preliminary Matters

The tenant did not supply a detailed calculation of the amount claimed. A 2 page hand-written submission plus 43 photographs were supplied as evidence by the tenant.

The landlord did not make a written submission.

Background and Evidence

The landlord lives in a portion of the home, where the rental unit is also located.

The landlord confirmed that on June 4, 2013 the tenant's belongings were removed from the rental unit without the benefit of a Writ of possession. The landlord's spouse provided affirmed testimony that she and a friend did pack the tenant's personal property and place them in a covered area outside.

A previous hearing was held in which the tenant's application disputing a Notice ending tenancy was dismissed and, as a result, on June 12, 2013 I issued the landlord an Order of possession.

The tenant went to the rental unit on June 4 to find that his belongings had been removed from the unit. The tenant called the police, who attended the home. The tenant said that the landlord had stolen the following items:

- \$6,000.00 U.S. cash;
- A Nikon camera with a flash and 2 lenses;
- Rolex watch (Submariner);
- Necklace; and a
- Panasonic camcorder.

The receipt for the camera was in the camera bag.

The watch and necklace had been a gift from the tenant's parents.

The landlord's spouse said that the tenant accused them of stealing items before the tenant even looked in the boxes that the landlord had packed and taped closed. The landlord's spouse said that she had been respectful with the tenant's property and had thought he had abandoned the unit as he had not been staying in the home for a week. The tenant had been to the home the evening before and had acted in a threatening manner, so the landlord's spouse had called the police.

The tenant said that he had arrived at the home on June 4, 2013, and when he saw his belongings had been removed he called the police. Afterward he did look in the boxes and he could not locate his missing property. The landlord had moved his belongings without permission or legal authority. The tenant did not have any discussion with the landlord in relation to the alleged missing personal property.

The tenant's written submission indicated he would like to submit documents to support his application. The submission also suggested that the tenant be called should further information be required.

The written submission indicated that the tenant also had witnesses; none of whom were present during to the hearing to provide testimony. The tenant said that the cash was from the sale of a home; that his brother would testify that he had given each of 6 siblings a share in the sum of \$9,500.00; and that the tenant had \$6,000.00 remaining.

The photographs supplied as evidence showed the tenant's personal property that had been moved into the landlord's carport; this was not in dispute. The photographs showed some boxes that had been packed by the landlord. The tenant did then remove all of his property; but claims that the valuables have been taken by the landlord and should be returned.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, in the absence of a Writ of possession or abandonment of the rental unit that the landlord did not have legal authority to enter the rental unit and remove the tenant's belongings on June 4, 2013. The parties had been waiting for a decision which I issued on July 12, 2013 in which the landlord was issued an Order of possession. I find that the landlord committed a serious breach of the legislation when he removed the tenant from the unit on June 4, 2013 prior to being given the legal authority to do so.

Once an Order of possession is issued and served to a tenant, if the tenant fails to vacate, a landlord must obtain a Writ of possession and then hire a Court-approved bailiff.

However, I find that a breach of the legislation by the landlord does not automatically entitle the tenant to compensation; the tenant must prove, on the balance of probabilities, that the existence of the personal property can be confirmed, that the property is missing as a result of the action of the landlord and verification of the value of the property.

I accept that the tenant's brother would testify that he had given the tenant \$9,500.00; however, that testimony, even when combined with the tenant's, would not be sufficient to support the submission the tenant had a briefcase containing \$6,000.00 and the other valuables he claims the landlord has taken. In order to give this claim any weight I would expect verification beyond the testimony of the tenant's brother or friends.

Further, the tenant did not provide any description of the watch and necklace he says was taken and no specific value was assigned to either. There was no evidence of the value of the camcorder and camera, such as current replacement costs.

Therefore, in the absence of any banking records, sworn affidavits, proof of sale or any other documentation verifying the ownership of the items and their value, I find that the claim for loss of the personal property is dismissed and that an order for return of personal property is not required.

Conclusion

The application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 09, 2013

Residential Tenancy Branch

