



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 2, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for the return of personal property?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2011. The tenancy agreement provided that the tenant(s) would pay rent of \$900 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$450 at the start of the tenancy.

The landlord served a one month Notice to End Tenancy and a 2 month Notice to End Tenancy on the tenant. An arbitrator cancelled the one month Notice to End Tenancy. The tenant did not dispute the 2 month Notice which set the end of tenancy for the end of July. The tenant testified that he vacated the rental unit on August 6, 2013. He testified his new place was not available for occupancy until August 15, 2013. The landlord would not permit him to stay until that time and as a result he purchased a tent and camped for 9 days. The tenant testified that the landlord agreed that he could store some of his belongings on the landlord's property and that the landlord would ensure the gate was locked. When he returned on September 9, 2013 he discovered that many of the belongings were missing and other were significantly damaged.

The landlord disputes the tenant's claims. She testified the tenant removed all of his belongings and told her that the remainder was garbage which should be disposed off. She testified the tenant is not telling the truth and urged me to do an investigation. I advised the parties that my role as an arbitrator is to make a decision based on the evidence presented at the hearing.

The tenant raised a number of claims that were not identified in the Application for Dispute Resolution. Those claims included a claim for compensation because the landlord did not move into the rental unit as stated in the 2 month Notice and damage to a treadmill. I advised the parties that I could not consider those claims as they were not raised in the Application.

Analysis

Return of Personal Property:

The landlord stated that she does not have any of the tenant's personal property. As a result I determined it was appropriate to consider the tenant's claim as a claim for a monetary order. The claim for an order for the return of personal property is dismissed.

I determined the appropriate measure of damages when dealing a claim for lost or damaged property is the depreciated value and not the replacement value.

Monetary Order:

With respect to each of the tenant's claims I find as follows:

- a. The tenant testified that his aluminium ladder was missing. He produced evidence to show that the cost to replace the ladder was \$129. He testified the ladder was approximately 2 months old. I determined the landlord failed to take reasonable care of the tenant's belongings. I determined the tenant is entitled to \$120 of this claim being the depreciated value and considering taxes that would be payable.
- b. The tenant testified a Mastercraft socket set was missing. He produced evidence that the value of the set was \$300. He testified it was one month old. I determined the landlord failed to take reasonable care in storing the tenant's belongings and the tenant is entitled to the \$300 claimed.
- c. I determined the tenant is entitled to \$10.49 for the cost of bolt cutters.
- d. The tenant claimed \$200 for the cost of a tenant and \$233 for the cost of staying 9 days at a campground. He submitted the landlord's eviction was not lawful and he is entitled to these sums. I determined the tenant has failed to prove the landlord is liable for these items. The tenant did not dispute the two month Notice to End Tenancy and the landlord obtained an order for possession. While the tenant may have a claim against the landlord for the landlord's alleged failure to move into the rental unit as set out in the Notice, the tenant must file that claim. However, it does not give him the right to make a claim for the cost of a tenant (which he still retains) and the cost of staying at the campground.

- e. The tenant claimed \$500 for the cost of a kid's mud bike. The tenant alleged the landlord used it without his permission and damaged it. The bike was two years old. While the tenant produced sufficient evidence as to value when purchased new he failed to present sufficient evidence for me to determine that all of the damage was caused by the landlord. I determined the tenant is entitled to \$100 of this claim.
- f. I dismissed the tenant's claim for the cost of a storage shed as the landlord is not responsible for this claim.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$539.49 plus the sum of \$50 in respect of the filing fee for a total of \$589.49.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 08, 2013

Residential Tenancy Branch

