



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants, to cancel a notice to end tenancy for nonpayment of rent, which was received on January 2, 2014, and for a monetary order for loss or damage under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenants confirmed that they received the landlord's evidence packages. The tenants confirmed that they did not provide any evidence to the landlord.

Preliminary Matter and Procedure Matter

The tenants attending the hearing late, the tenants stated that they were having difficulties locating a telephone in the "mall". The tenant stated they may have to exit the hearing as they are using the telephone of one of the merchants.

The tenants were cautioned that this hearing was scheduled to hear their application and that if they exit the hearing before the conclusion that their claim may be dismissed. Shortly after that the merchant came on the telephone line and said they needed their telephone to conduct business and the tenants exited the hearing.

As I had heard the testimony of the tenant (CL), the balance of the hearing was conducted in their absence as per Rule 10.1. The tenants are cautioned that failing to be prepared and failing to make prior arrangements for the use of a telephone will not be grounds for a review consideration.

At the outset of the hearing the tenants stated they are not disputing the notice to end tenancy for unpaid rent. The counsel for the landlord requested an order of possession

at the hearing; I find under section 55 of the Act, I must grant that request. Therefore, I find the landlord is entitled to an order of possession effective **two (2) days** after service on the tenants.

Issue to be Decided

Are the tenants entitled to a monetary order for loss or compensation under the Act?

Background and Evidence

The tenancy began on September 1, 2013. Rent in the amount of \$750.00 was payable on the first of each month.

The tenant CL, testified that they seek compensation for the loss of their belongings because on December 18, 2013, the landlord entered their rental unit without their permission and took all their belongings out of the rental unit and placed them on the front lawn.

The tenant stated she had received a text message from the landlord, telling them to come and get their belongings. The tenants stated that they called the police and the police gave them access to the rental unit and they moved their belongings back inside, however, there were a large amount missing.

The tenant stated she has provided a list of the items and has given those items a value, but has not provided any documentary evidence or any evidence to support the actual value claimed.

Counsel submits that there was a mutual agreement in writing signed by the parties on December 10, 2013, to end the tenancy on December 17, 2013, and that mutual agreement gave the landlord permission to enter the unit after that date and any items left behind would be considered abandoned by the tenants. Filed in evidence is a copy of the agreement.

Counsel submits at no time between December 10 and 17, did the tenants inform the landlord that they would not be vacating the rental unit as agreed upon.

Counsel submits that on December 18, 2013, the landlord went to the rental unit as per the agreement and place the tenants items out in the yard, and for the most part those items were being watched over in the hopes the tenant would come back for their belongings which they did later that evening.

Counsel submits the tenants have not provided any documentary evidence to support the value of their claim. Counsel submits that the tenants have also claimed items that they have in their possession, such as the battery charger and DVD player, as these items have been photographed by the landlord. Filed in evidence are photographs.

Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenants have the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

The parties entered into a mutual agreement to end the tenancy on December 17, 2013. The tenants did not provide the landlord with any correspondence that they were not vacating the rental premises as agreed. On December 18, 2013, the landlord went to the unit and removed items in accordance with the agreement.

Even, if I accept the landlord version, that he believed the property was abandoned by the tenants, the landlord was required to make a list of all the items and store those items for sixty days if the value of the items exceeded \$500.00.

While the agreement indicates the landlord has the right to the thing which are left behind, I find that term is contrary to the Residential Tenancy Regulation, as the landlord is required to follow the provision for abandonment of personal property.

However, in this case the landlord has provided photographs of items claimed by the tenants and those items are in the tenants' possession, such as the battery charger and a DVD player.

Further, the tenants have provided no documentary evidence, such as estimates of any of the alleged lost items to prove their fair market value as required.

In light of the above, I find the tenants have failed to prove the loss exists and the actual amount required. I find the tenant have failed to prove the four different elements required to support their claim. The tenants' application is dismissed without leave to reapply.

Conclusion

The tenants no longer disputed the notice to end tenancy for non payment of rent. I grant the landlords verbal request an order of possession.

The tenants' application 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: February 19, 2014

Residential Tenancy Branch