



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP

Introduction

This hearing dealt with an application by the tenants for an order for the return of their security deposit and for an order that the landlord return the tenants' personal property.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Are the tenants entitled to an order for the return of their security deposit?
Are the tenants entitled to an order for the return of their personal property?

Background and Evidence

The tenant gave evidence that the tenancy started February 1, 2012 and ended November 15, 2013. His evidence is that the tenants were obligated to pay \$850.00 rent per month and they paid a security deposit of \$425.00.

The tenant gave evidence that the landlord gave the tenants three months notice to move, specifying a move-out date of December 1, 2013. The tenant's evidence is that they found a new place and arranged to move on November 15, 2013. His evidence is that the landlord rented a truck for them, helped them load and unload the truck twice, and drove the truck for them to their new address.

The tenant gave evidence that he provided their new address to the landlord in writing after the move. He said he arranged to meet the landlord at a local Tim Hortons in early December 2013 and at that point asked the landlord for the return of their security deposit. He said the landlord told him he was "working on it".

The tenant's evidence is that he sent a letter to the landlord by registered mail on December 9, 2013 in which he asked for the return of the security deposit.

The tenant gave evidence that the tenants had a third truckload of belongings to move, however the landlord wished to return the rental truck. The tenants' evidence is that the landlord told him the landlord would bring over the remaining items in his own pickup truck the next day. The items included garden tools, a shovel, a barbeque, and lids to garbage cans. He said the landlord did not bring the remaining items, and he seeks an order for their return.

The tenant said he received a letter from the landlord dated December 31, 2013 in which the landlord said "I have retained your security deposit for the purpose of restoring the suite." The letter also said the landlord had disposed of the tenants' remaining property because "the property was, as you agreed, only garbage."

The landlord agrees with the tenant as to the dates of the tenancy, however the landlord's evidence is that the tenants were obligated to pay \$900.00 rent per month and the security deposit paid was \$450.00.

The landlord gave evidence that the parties did not have a conversation prior to the tenants' moving day about when a move-out inspection would take place. The landlord agrees he rented a truck to help the tenants move, however he states the tenants agreed to reimburse him for the cost of renting the truck.

The landlord gave evidence that the parties moved two truckloads of the tenants' belongings to the tenants' new home on November 16, 2013 which was a Saturday. After the second truckload, both the tenant and the landlord returned to the rental unit. The tenant, who does not drive, told the landlord he would stay at the rental unit for a few days to clean and they could then do a move-out inspection.

The landlord gave evidence that he came home from work on Monday, November 18, 2013 and noted the doors and windows were all open in the rental unit and the tenant had left. He said he closed the doors and windows for security reasons. The landlord said he entered the rental unit on November 19, 2013 and noticed a "really bad" smell; he said he could not walk into the rental unit without gagging.

The landlord denies that the parties ever met at a Tim Hortons after the move. The landlord's evidence is that the tenant phoned him after the move to ask about the security deposit and the landlord told him he did not intend to return it. He said the

tenant then became rude on the phone and told the landlord to not come on the tenant's new property.

Asked what steps he took to schedule a move-out inspection, the landlord gave evidence that he called the tenant at least four times after November 18, 2013. He said he called the tenant on November 19, 2013 and told him "This suite is a mess. You need to come clean or we need to do a move-out inspection." He said the conversation ended in a disagreement about the condition of the suite. The landlord's evidence is that he called the tenant four times between November 19 and November 29, 2013 but the tenant did not answer. He said he left the tenant voicemail messages asking the tenant to call him. He said he also called the tenant once in early December 2013. The landlord gave evidence that, because the tenant cut off communication with him, there was no way he could schedule a move-out inspection. The landlord's evidence is that, although he drove to the tenant's new address on moving day, he did not think he could find it again and in any case the tenant had told him to stay off the property.

The landlord's position is that he did all he could to give the tenant an opportunity to participate in a move-out inspection. He said he left the suite in the condition it was in until December 22, 2013.

The landlord provided a copy of a photograph of the items the tenants left outside the rental unit on the day they moved. His evidence is that the items were garbage and everything was moldy. Further, he said the tenant told him he could deduct the cost of garbage removal from the security deposit. The landlord's evidence is that when they were loading the moving truck for the second time, the landlord suggested they could fit more of the remaining items in the truck but the tenant told him he could just throw it out.

The tenant agrees that the conversation on November 16, 2013 regarding cleaning and a move-out inspection took place. His evidence is that he stayed at the rental unit over the weekend of November 16 and 17, 2013 and cleaned the rental unit. His evidence is that the landlord came downstairs several times each day while he was cleaning, and that the landlord complimented him on the job he was doing. His evidence is that he wanted to do more cleaning, but the landlord told him he had done enough.

The tenant agrees the landlord called him on approximately November 19, 2013. He says the landlord told him that he was not going to return the security deposit and wanted to charge him more for damage to the rental unit. The tenant's evidence is that the landlord did not say anything about a move-out inspection. The tenant agrees he became angry in that telephone conversation about not getting his security deposit

back. Asked if the landlord called him again after that conversation, the tenant said his telephone does not indicate there were further calls from the landlord. Asked whether he called the landlord again after that conversation, the tenant said he did not because "it would just be strife".

Analysis

Pursuant to Section 35 of the Act, the parties must inspect the condition of the rental unit on or after the day the tenant moves out or on another mutually agreed day, and the landlord must offer the tenant at least two opportunities for the inspection.

Section 36(1) provides that if a landlord meets his obligation to offer at least two opportunities for inspection, and a tenant does not participate in a move-out inspection, then the tenant's right to a return of his security deposit is extinguished.

I find that the landlord met his obligation pursuant to Section 35(2). I accept the landlord's evidence that he called the tenant at least four times after the tenant moved out and, after they had a disagreement in the first telephone call, the tenant did not return his phone calls. I prefer the landlord's evidence because the landlord remembers calling the tenant many times, while the tenant apparently did not remember one way or another. The tenant seemed somewhat evasive when he said that his telephone did not indicate further calls from the landlord. I find that the landlord did telephone the tenant several times after the tenant moved out to provide an opportunity for a move-out inspection and the tenant did not avail himself of the opportunity. Accordingly, I find the tenant's right to a return of his security deposit is extinguished by the operation of Section 36(1). The landlord is therefore authorized to retain the security deposit.

I accept the evidence of the landlord regarding the items left behind at the rental unit when the tenant moved out. The landlord's evidence that the tenant told him he could dispose of the items is consistent with the tenant's behaviour after the move. The tenant did not return to the rental unit after November 18, 2013 and did not make any efforts to get the remaining items. Also, the photograph provided by the landlord appears to confirm that the items were not of any significant value. I find that the tenant told the landlord he could dispose of the items that were left behind after the second truckload. I therefore dismiss the tenants' claim for the return of their personal property.

Conclusion

The tenants' application is dismissed.

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: March 19, 2014

Residential Tenancy Branch

