



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return the tenant's personal property; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness, but neither party has provided any evidentiary material.

The tenant advised that the day prior to this hearing he had sent by facsimile evidentiary material to the Residential Tenancy Branch, but did not provide any to the landlord. No evidence had been received by me prior to the hearing, and where a party does not provide evidence to the other party, it cannot be considered. In this case, the evidence has not been received by me and has not been provided to the landlord, and therefore, I decline to consider it.

During the course of the hearing, the tenant disconnected from the conference call. The line remained open while the phone system was monitored for 5 minutes while the hearing was stopped, but the tenant did not return. Also, the witness of the landlord disconnected before he finished testifying. The line remained open, but the witness did not return.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be ordered to return the tenant's personal property?

Background and Evidence

The tenant testified that this month-to-month tenancy began in July, 2013 and the tenant was locked out of the rental unit sometime in March, 2014 for unpaid rent. No written tenancy agreement was signed by the parties, but rent in the amount of \$400.00 per month was payable on the last day of each month. Currently, there are no rental arrears. The landlord did not

collect a security deposit or a pet damage deposit from the tenant. The rental unit is a room in a house that the landlord rents from another landlord. No move-in or move-out condition inspection reports were completed.

The tenant further testified that in April, 2014 the tenant and his wife attended the rental unit to retrieve their belongings and offered the landlord 2 post-dated cheques in the amount of \$200.00 each, but the landlord refused them. The cheques were dated April 15, 2014 and August 15, 2014. The landlord allowed them to take some clothes, but not all of the belongings because rent was still owed. The rental arrears were paid in full on August 16, 2014 but the landlord advised the tenant that the tenant's personal belongings were given to a mutual friend of the parties. The tenant called the friend who advised that he did not have any of the tenants' belongings.

The tenant does not seek a monetary order but requests an order that the family photographs be returned to the tenant. Missing items include books, a computer, a printer, shoes, clothes, a piano keyboard and photographs.

The landlord testified that he rents the 3 bedroom rental unit from another landlord, and rented out one bedroom to the tenant.

The landlord also testified that the tenant was given 15 days rent free and then the landlord had difficulty getting rent. The tenant would pay \$100.00 or \$50.00 at a time but never the full amount of \$400.00. The tenant started to avoid the landlord, so the landlord stayed home from work one day to talk to the tenant. The tenant told the landlord that he didn't have the money so the landlord told him to vacate the rental unit. The tenant didn't say anything, and the landlord then added that if the tenant couldn't afford it, just move out; the house smells and soiled clothing belonging to the tenant had become moldy and insects were coming out of the bottom of the door. The landlord also told the tenant that he didn't care if the tenant paid the rental arrears or not because the landlord knew the tenant didn't have any money.

The landlord further testified that when the tenant arrived to pick up his belongings, the landlord thought the tenant would take it all but he didn't. The landlord had to clean the room and carpet. There were garbage bags of stuff left behind and the landlord waited until the end of July for the tenant to pick it up. All that remained was junk, so the landlord assumed the tenant had left it there for the landlord to dispose of. The locks were changed at the end of May after items had been picked up, because the landlord wanted to be there when the tenant returned for the rest of his belongings. The landlord did not see any family photographs, only old yard-sale books, newspapers, a broken guitar and broken case, a very old printer, speakers that are non-functional and similar miscellaneous items. The landlord took it all to Value Village during the last week of July. There was a garbage bin there so 6 or 8 garbage bags were thrown in the dumpster and the other items were donated. He opened one of the bags that had old newspapers in it and it smelled bad and there were insects in it. The landlord thought

something might be rotting in it and due to his asthma, it scared him and he disposed of all of the bags without opening any others.

The landlord's witness testified that he knew the tenant prior to this tenancy, and had originally recommended the tenant to the landlord. At the end of the tenancy the landlord had asked the witness for advice when the landlord couldn't get ahold of the tenant. The witness told the landlord to get rid of the tenant's belongings and the landlord asked the witness to assist. The landlord and the witness took all belongings to Value Village at the end of July. There were about 4 boxes, which took about 4 trips because the witness has a very small car. Some boxes were smaller than others.

Analysis

The tenant testified that he is not looking for any monetary compensation, but wants his items back. The landlord and the landlord's witness both testified that the items were taken to Value Village. The landlord testified that the items were of little or no value and that he thought the items had been left behind by the tenant for the landlord to dispose of. He testified that some items were donated to Value Village and other items in garbage bags were disposed of in the garbage bin because one bag appeared to have something rotting in it.

The *Residential Tenancy Act* and the regulations specify the method for disposing of items left by a tenant, and I have no evidence before me that any items left by the tenant were of any value. I find that the tenant has failed to establish that the landlord should return any of the tenant's personal property or the value of any of it, and I dismiss the tenant's claim without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: October 31, 2014

Residential Tenancy Branch

