



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RPP

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, for the return of the Tenant's personal property and for the return of personal property.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 8, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

It should be noted that the a Landlord has an application for damages and to retain the Tenant's security deposit that will be heard on December 10, 2014; therefore I will not be giving a decision on the security deposits in this decision.

Issues(s) to be Decided

1. Is there a loss or damage and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. Is the Tenant entitled to his personal property and how may it be returned to him?
4. Is the Tenant entitled to the return of his security and pet deposits?

Background and Evidence

This tenancy started in December, 2013 as a month to month tenancy. Rent is \$1,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 and a pet deposit of \$750.00 in advance of the tenancy. A move in condition inspection was completed on January 10, 2014 and no move out condition inspection was completed. The Landlord said move out inspection was not completed because the Tenant abandoned the unit. The Tenant said he could not live in the unit because it had no water or power.

The Tenant said that the female Tenant moved out prior to May 5, 2014 and that the male Tenant continued to live in the unit. The male Tenant was not in the unit due to back surgery from May 5 to May 8, 2014 and then he was back in the hospital for 5 days starting May 15, 2014 and from June 5 to June 8, 2014. The Tenant continued to say that the Landlord put his belongings out in the yard on August 5 and 6 and the Landlord turned the power and water off in the rental unit at night time starting in July, 2014. The Tenant said that the Landlord did finally deliver his belonging to him on November 8, 2014. The Tenant continued to say that because the Landlord removed his belongings the Landlord is responsible for compensating him for any losses he has incurred as a result of damage to his belonging or loss of his belongings. The Tenant said his claim was \$22,681.94 when he made the application on October 8, 2014, but as the Landlord has returned some of his things he has reduced his claim as follows:

Loss of Garden food	\$1,000.00	
Loss of meat in freezer	\$1,000.00	
Loss of fish in fish tank	\$ 499.96	
Loss of blue tooth electronics	\$ 150.00	
Loss of DVR	\$ 500.00	
Loss of boots	\$ 200.00	
Loss of lawn tractor	\$1,000.00	
Loss of tools	\$ 750.00	
Loss of Kids table	\$ 50.00	
Loss of Patio light	\$ 20.00	
Loss of kids ID	\$ 150.00	
Loss of basketball hoop	\$ 50.00	
Loss of jewellery	\$ 600.00	
Loss of kids work bench	\$ 100.00	
Loss of car seat	\$ 100.00	
Damage to furniture	\$1,750.00	
Damage to boat	<u>\$ 500.00</u>	
TOTAL		<u>\$9,869.96</u>

The Tenant continued to say that he submitted photographs of his property in the back yard of the rental unit dated August 6, 2014 as evidence that the Landlord removed his belonging from the rental unit.

The Landlord said he issued a 10 Day Notice on July 3, 2014 for unpaid rent as the Tenant was not paying the rent and the social assistance cheque did not come to the Landlord for the rent. The Landlord said he went to the rental unit and no one was there, but he did talk with the Tenant on July 8, 2014 when the Tenant gave the Landlord his application and hearing package. The application for dispute resolution was made by the Tenant to cancel the 10 Day Notice to End Tenancy and then later amended for monetary compensation, for the return of property and for an order of possession. It should be noted that the Tenant withdraw that application on September

17, 2014. The Tenant said it was due to technical issues on the hearing date of September 16, 2014 the audit notes in the file say the Tenant withdraw the application due to complications from his back surgery.

The Landlord continued to say that when he did not receive the rent for July, 2014 he went to the Ministry of Social Services and he was told the Tenant had stopped the rent assistance payments to the Landlord. The Landlord said that because he had not seen the Tenant at the rental unit for over a month and because the Tenant had stopped the Ministry's rent payments to him, the Landlord determined the Tenant had abandoned the rental unit. The Landlord said the Tenant's children were removed from the rental unit prior to May, 2014 and the Tenant's wife moved out prior to May 5, 2014 and now that the rent payments were stopped the Landlord decided the Tenant had abandoned the rental unit as of August 5, 2014. The Landlord said on August 5 and 6, 2014 he and his assistant removed the Tenant's belongings from the house and stored them over night in the yard and then put the property in storage in another house owned by the Landlord and in his enclosed trailer. The Landlord said that when he received the Tenant's new application and new address he made arrangements to deliver the Tenant's property to the Tenant's new home. The Landlord continued to say the Tenants signed a note acknowledging receive of "some if not all personal belongings in good condition". The Tenant said this note was signed prior to unloading their belongings and the Landlord said the note was signed when the trailer was $\frac{3}{4}$ unloaded. The Landlord said he believed the Tenant abandoned the rental unit in July, 2014, he stored the Tenant's belongings in accordance with the Act and he delivered the Tenant's property when he had a forwarding address for the Tenant. The Landlord said he has complied with the Act and he is not responsible for the claims the Tenant is making. The Landlord said the Tenant is trying to profit on the situation.

The Tenant said he did not abandon the property as he had filed an application to dispute the 10 Day Notice to End Tenancy for Unpaid and he had a hearing date for September 16, 2014. The Arbitrator asked the Tenant if he had obtained other rental accommodation and if so when did that tenancy start. The Tenant said he started a new tenancy on August 1, 2014 and he had redirected the social assistance payment to the new Landlord. The Tenant continued to say that he was unable to get his property from the Landlord as he did not know where the Landlord had stored it. Both parties said they did not talk to each other after July 8, 2014 at the Landlord's house.

The Landlord continued to say that he was not sure that the value of the Tenant's property warranted storage, but he did it as the Act requires him to do. As well the Landlord said the values the Tenant has put on his claim are not accurate as most of the Tenant's property was old and out of date.

The Tenant said his property was in good shape prior to the Landlord storing it and some of it was old because it had been passed to him from family. The Tenant said the amounts are representative of the value.

The Landlord said in closing that he believed the Tenant had abandon the rental unit because the Tenant was not at the unit for over a month, he did not pay the rent and he did not contact the Landlord. The Landlord said he cleaned the unit stored the Tenant's property and delivered the Tenant's property to the Tenant when he had the Tenant's forwarding address. As well the Landlord said the Tenants both signed a note acknowledging the property being returned and in good condition. The Landlord said the Tenant's claims are not reasonable and he is not responsible for the Tenant's claims.

The Tenant said in closing that he submitted rent receipts, he did not know where his property was so he could not move it and he did not abandon the property.

Analysis

After reviewing a large amount of testimony and substantial written evidence including photographs, I found a substantial amount of contradictory testimony and conflicting writing evidence. The Tenant alleges that he could not live in the rental unit because the Landlord turned the power and water off at nights and that the Landlord removed his belongings and damaged them. As a result the Tenant is looking for compensation in the amount of \$9,869.96. The Landlord said he believed the rental unit was abandon and after 30 days he removed and stored the Tenant's property and then delivered it when he had the Tenant's forwarding address. As well the Landlord submitted a note signed by both Tenants and the Landlord saying the Tenant's property was returned in good condition. As a result the Landlord says the Tenant's claim against him is not valid.

From the testimony of both parties it is agreed that the Tenant's did not pay the full rent for June or July, 2014 and the Tenant stopped social assistance rent payments to the Landlord in July, 2014. As well the Tenant gave affirmed testimony that he started a new tenancy on August 1, 2014. Whether or not the Tenant had an application to dispute the Notice to End Tenancy the Landlord issued on July 3, 2014, the Tenant started a new tenancy on August 1, 2014. Given this information, I find that by the balance of probabilities this means the tenancy between the Landlord and the Tenant in this dispute was ended in July, 2014. As well since the parties said there was no communication between them after July 8, 2014 and the Landlord said the Tenant was not living in the rental unit; I accept the Landlord's position that the rental unit was abandon. As well since the Tenant had made arrangement to start a new tenancy on

August 1, 2014 it is the Tenant's responsibility to give notice to the Landlord and to remove the Tenant's property from the rental unit. The Tenant did not do this and the Tenant just left his property in the rental unit. I find the rental unit was abandon and the Tenant abandoned his personal property.

Regulation 24 says (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) **that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or**

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) **the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.**

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

I find that the Landlord has complied with the Act as he reasonably thought the rental unit was abandon due to nonpayment of rent and that the Tenant was not living at the

property for over one month. The Tenant's claim that he could not live in the unit because the water and power were being turned off at night by the Landlord has little merit because the Landlord said he started turning the water and power off on July 30, or 31, 2014 after the Tenant had abandon the unit.

In addition the Tenants signed a note that states they received the return of their property in good condition on November 8, 2014. The Tenants said they signed the note before inspecting the property and the Landlord says the property was inspected after unloading $\frac{3}{4}$ of the property. I accept the Landlords testimony as the note says the property was in good condition and if it was not inspected how could the Tenant sign that the property was in good condition.

Consequently I find that the Tenant's claim has no merit as the Tenant abandon the rental unit and his property and the Landlord has complied with the Act and regulation in returning the Tenant's property as well as having the Tenants acknowledge the return of the property.

I dismiss the Tenant's allocation without leave to reapply.

Conclusion

I find that the Tenant has not established grounds for his application and I dismiss the Tenant's application 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: November 26, 2014

Residential Tenancy Branch

