



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RPP, MNDC

Introduction

This hearing was convened in response to an application filed by the tenant on November 20, 2014 seeking the landlord be ordered to return their personal property. The application is inclusive of a monetary claim seeking compensation for the lack of their belongings.

Both parties participated in the hearing and provided testimony. As well, the parties forwarded evidence / submission prior to the hearing. The tenant was assisted by their advocates.

Issue(s) to be Decided

Should the landlord be Ordered to return the tenant's personal belongings?
Is the tenant entitled to the monetary amounts claimed?

The burden of proof rests on the claimant tenant.

Background and Evidence

This tenancy ended October 31, 2014. It is undisputed the tenant did not remove all of their belongings from the rental unit. The landlord considered the tenant's belongings abandoned. There was no agreement respecting the storage or management of the tenant's belongings. Therefore, the landlord gathered the tenant's remaining items, documented them, stored them, and cleaned the unit.

The tenant initially claimed the landlord refused to allow them to retrieve their items and later claimed the landlord would make their items available on condition the tenant paid the landlord \$165.00 for removing, storing, and otherwise managing the tenant's items and end of tenancy costs for cleaning. One of the tenant's advocates testified the landlord stated to them the tenant was responsible for their costs and that payment was required for the tenant to retrieve their belongings –which they referred to as “ransom”.

The landlord testified their disinterest in retaining the tenant's belongings and of their ongoing willingness to return the tenant their items; however, they claim the tenant obstructed efforts to do so – wavering on plans to retrieve their items and stating their preference to pursue arbitration rather than engaging in a plan to retrieve their items. Effectively, the landlord claims the tenant has misrepresented the situation in that it has always been available to the tenant to recover their items. None the less, the landlord stated that the tenant is responsible for their costs for managing the tenant's items, requested these costs and seeks to recover them.

The parties exchanged an abundance of contrasting testimony in respect to who was responsible for the lack of finality to this matter of the fate of the tenant's items. However, During the hearing the parties discussed their dispute in respect to the retrieval of the tenant's items and with the aid of the tenant's advocates both parties consequently agreed to a course of action to accomplish the task, without emphasis or condition as to the landlord's claimed costs.

The tenant testified that as result of the landlord's initial refusal to unconditionally return their items, they were inconvenienced by the lack of their items, which the tenant claims included clothing and identification in order to work – with the tenant claiming they forwent work as a result.

Analysis

On preponderance of the evidence in this matter and on the balance of probabilities, I have arrived at the following findings.

I am satisfied the parties will attend to the return of the tenant's items at a mutually agreed date and time. As a result, I find insufficient basis to Order the landlord to comply with the Act in this respect. As a result I **dismiss** this portion of the tenant's application.

I find that the landlord did not deny they originally sought payment of their costs for removing and storing the tenant's items before they would return them. As a result I prefer the tenant's evidence that these circumstances were the case as a condition of returning the tenant's items. However, I am not satisfied it was improper or unreasonable for the landlord to do so. **Section 26** of the *Residential Tenancy Act Regulation* states, as follows:

Tenant's claim for abandoned property

26 (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

- (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing and storing the property, and

(ii) a search required to comply with section 27 *[notice of disposition]*, and

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

While I accept the tenant was inconvenienced by the unavailability of their belongings I find, on balance of probabilities that the landlord's conduct was solely at the root of the issues in this matter. I find that in the least it was available to the tenant to ensure they did not leave behind key items, such as their identification. I find the tenant has not provided evidence of forgone compensated employment. I also find the tenant has not provided sufficient evidence in support their claim the landlord unreasonably withheld their items. As a result, I **dismiss** the tenant's monetary claim.

Conclusion

The parties have agreed to a course for the tenant to retrieve their belongings.

I **dismiss** the tenant's claim for an Order the landlord return their belongings.

The tenant's claim for compensation is **dismissed**.

This Decision and Order is final and binding on both parties.

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: December 10, 2014

Residential Tenancy Branch

