



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenants Application for Dispute Resolution, in which the tenant has requested compensation for the cost of emergency repairs, damage or loss under the Act and return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

There was no claim before me for the cost of emergency repairs.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage and loss related to personal property?

Must the landlord be Ordered to return the security deposit to the tenant?

Background and Evidence

This tenancy commenced approximately 4 years ago. A number of facts were agreed upon by the parties. There was no dispute that on July 3, 2013 the landlord was issued an Order of possession for the rental property. The tenant received the Order of possession shortly after it was issued.

On August 12, 2014 the landlord enforced the Order of possession by obtaining a Writ of possession, issued by the Supreme Court of BC on August 7, 2014.

On August 12, 2014 several RCMP members, a Court-approved bailiff and the landlord entered the rental unit.

The tenant said that he was asked to sign some documents and that the bailiff then packed his belongings. The bailiff had a moving van at the site.

The landlord said he was told to wait in the hallway and that he had no part in the process regarding the removal of the tenant's belongings from the rental property. When the bailiff was almost finished completing the packing the landlord was asked to enter, to view the state of the home.

Documentation confirming the Writ of possession and bailiff process were supplied as evidence.

The landlord said he believes there is a signed tenancy agreement; a copy was not available to the landlord. The landlord could not recall the tenant paying a security deposit.

The tenant said that the security deposit was paid directly to the landlord by the government ministry that also paid his rent.

Given the landlord's hesitance in relation to the payment of deposit I determined that the tenant would be given time to obtain proof of payment of a security deposit to the landlord, approximately 4 years ago. The tenant is to serve the landlord and Residential Tenancy Branch (RTB) a copy of this evidence no later than March 24, 2015. The tenant confirmed he could serve the documentation within this time-frame. The landlord has until April 7, 2015 to submit any written rebuttal to the RTB.

The parties were informed that the hearing would end once the final decision has been issued.

By April 8, 2015 no additional submissions were made by either party.

Analysis

Residential Tenancy policy suggests that the Act applies to tenancy agreements, rental units and residential property. The tenant has applied requesting compensation as the result of what has been confirmed and agreed as the removal of his personal property from the rental unit by a Court appointed bailiff.

There was agreement that the landlord did not participate in executing the Writ of possession; he was there to observe, but did not have the authority to remove the tenant or his property. From the evidence before me I find that the tenancy had ended in 2013, at the point the Notice ending tenancy became effective. From that time until the execution of the Writ of possession, the Act applied. I find that once the Writ of

possession was issued and the bailiff commenced enforcement of that Order on August 12, 2014, the landlord no longer assumed responsibility for the tenant's property. It was confirmed by the tenant that the landlord did not remove the personal property.

Therefore, as the loss of any property is alleged to have occurred as a result of the removal of property by the bailiff, who had legal authority to do so, I decline jurisdiction for this portion of the claim.

There was no evidence before me of a signed tenancy agreement or any other document confirming receipt of a security deposit by the landlord. As the landlord said he could not recall the tenant paying a security deposit I find that the claim for return of a deposit is dismissed with leave to reapply within the legislated time-frame. I continue to be unconvinced that a deposit was or was not paid.

Further, there was no evidence before me that the tenant has provided the landlord with a written forwarding address, as required by the Act. The tenant is at liberty to do so.

Conclusion

The claim related to personal property is declined as outside of the jurisdiction of the Act.

The tenant has leave to reapply for return of any security deposit that may have been paid.

This decision is final and binding and 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: April 8, 2015

Residential Tenancy Branch

