



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNRISE VALLEY MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD RPP

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord return personal property pursuant to section 65(1)(e) and/or compensation for its value and for illegal eviction;
- b) For a refund of his security deposit; and
- c) For a refund of two months rent when he was locked out.

Service:

The landlord agreed they received the Application for Dispute Resolution and evidence and the tenant acknowledged receipt of the landlord's evidence. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has denied access to their personal property and will not return it contrary to section 65(1)(e) of the Act? If the goods are lost, has the tenant proved the amount of compensation to which he is entitled?

Is he entitled to a refund of two months rent and the security deposit?

Background and Evidence

Both parties attended the hearing with witnesses and were given opportunity to be heard, to provide evidence and to make submissions. There were seven participants in the hearing and much of the evidence was conflicting. The unit in dispute is located in a trailer part; the owner and her accountant are in the city and have little knowledge of the day to day events in the park which is managed by a manager.

It is undisputed that the tenant agreed to help another tenant, T.H., renovate another unit for T.H. to move into. T.H. states the tenant and his daughter were very upset because they had no place to live in the winter of 2014 so he agreed they could move into his old unit to get temporary shelter from the elements. On January 24, 2014, he signed a Shelter Information form for the Ministry stating the security deposit was \$275 but leaving the rental portion blank. He also signed a letter of confirmation dated January 24, 2014 that there would be employment opportunities at the park and training and work would "commence immediately upon residency in the park". He said he made a mistake in signing these papers out of compassion as once the tenant moved into his trailer he could not get him to leave. He said he made it clear to the tenant that if he wanted to rent the trailer, he had to contact the owner of the park and sign an agreement. He alleges the tenant moved other persons in with him, threatened him with violence if he tried to remove him, but there was never a tenancy created. The owner said she had no knowledge of this person named as tenant and T.H. had no authority to sublet. She said that T.H. had bought another trailer off them and was going to move into it.

The manager said she had requested the tenant to enter into a tenancy agreement for the unit formerly occupied by T.H. and pay a security deposit but he avoided her. The tenant said he put the gas and hydro in his name but T.H. denies that; no evidence of bills was provided to show this.

The accountant said they have records of two payments of \$375 made for this person but the payments were not allocated for they did not know who he was.

The tenant said he paid \$550 rent for the first month to T.H. Then payments were made directly from the Ministry. He said only \$375 came from the Ministry as his daughter was having problems getting her portion sent from the Ministry. He said he was locked out of the trailer in April 2014 but the Ministry cheques were cashed for April and May 2014. He requests a refund of those two cheques (2x\$375). The Ministry records show that the security deposit of \$275 was cancelled; the tenant said that it was agreed with T.H. that he would work that off instead. Ministry records provided by the tenant show payments of \$375 made to the park for March, April and May 2014 although the accountant says they only received two cheques.

The manager of the park said that after the tenant moved others in with him, there was illegal activity going on in the trailer and she told him she would call the Police about it. About that time in March 2014, she alleges he left, leaving some belongings behind. T.H. states he changed the locks because he was told by some mutual friends that the tenant had vacated. He and the manager took all the goods of the tenant and stored

them in a secure shed. She said her trailer is right across from this trailer and shed and she saw the tenant and one of the other friends who had moved in remove the goods during a few weeks at the end of March 2014. She said there was a T.V., some clothes and blankets but no furniture. The tenant claims \$8,000 as compensation for loss of his goods and illegal eviction.

Included with the evidence are Ministry records of payments, Shelter Information and a Letter signed by T.H., photographs from the manager, the tenancy agreement of T.H. with the park and submissions of the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The initial question is whether a tenancy was created. T. H. says there was none, the landlord owner states there was no tenancy to their knowledge but the tenant says there was a tenancy and he was illegally evicted. . As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find in this case insufficient evidence that a tenancy was created. A tenancy agreement is a contract involving an offer, certain terms, acceptance and consideration. I find at the most, there was some negotiation between T.H. and the tenant. T.H. said he allowed the tenant to move in as a temporary occupant on compassionate grounds. He said the Shelter Information completed by him was just to aid the tenant temporarily; I find the fact that no rental amount is filled in and the landlord is designated as the park supports T.H.'s evidence. Furthermore, I find the job offer was made on the basis that the tenant/occupant would become 'a resident' of the park which again indicates that T.H. did not regard him as a tenant. I find the park never agreed to rent to the tenant, T.H. had no authority to sublet and there is insufficient evidence that he intended to and

there is no evidence the tenant ever paid the amount of rent required, i.e. \$550 a month. He said the daughter was to get Ministry help with the rest of the rent but there is no evidence that this ever happened. A security deposit was not paid as it was cancelled by the tenant; he said he was to 'work it off'. T.H. alleges the tenant did not work as offered but was sporadic in his efforts. The manager said she offered a tenancy agreement but the tenant avoided it. The tenant said he put utilities in his name but provided no evidence of this and T.H. denies it. Therefore, I find insufficient evidence that there was ever a tenancy created. I find at the most that the 'tenant' was an unauthorized occupant as the weight of the evidence is that neither the park owner nor T.H. had given him permission to live there.

As an unauthorized occupant, I find the tenant was not illegally evicted as there was no tenancy to end or to violate. I find him not entitled to compensation for illegal eviction as I find T.H. merely retook possession of his trailer from unauthorized occupants. Although a friend gave some evidence, I find it is of little weight as she had no direct knowledge of the events but was relying on what was told to her. I dismiss this portion of his claim. However, the park owner and accountant agreed that they had received two payments from the Ministry which they could not allocate as they had no knowledge of the tenant/occupant. I find the tenant entitled to the refund of these two payments (2x\$375) which were part of his benefits for those months. I find him not entitled to a refund of the security deposit as he cancelled payment of this.

I find insufficient evidence to support the tenant's claim for return of his belongings or compensation for their loss. I find the manager's evidence credible that his goods were stored in a secure shed and she saw he and a friend pick them up during the latter part of March. I find her evidence more credible as she provided photographs as evidence showing the goods stored under plastic, she lives directly across from the location and her evidence was supported by T.H. I dismiss this portion of his claim.

Conclusion:

For the reasons set out above, I find the occupant/tenant entitled to a monetary order for \$750 for amounts forwarded to the park by the Ministry. I dismiss the rest of his claim in its entirety without leave to reapply. No filing fee was involved.

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: June 02, 2015

