



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, RPP, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, an order compelling the landlord to return his personal property and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to return the tenant's personal property?

Background and Evidence

Most of the facts are not in dispute. The tenant was served with a 10 day notice to end tenancy (the "Notice") on May 15, 2015 and no rental arrears were due at the time the Notice was served.

The rental unit suffered from an infestation of cockroaches which required treatment. On or about February 5, 2015, a professional pest control company performed a treatment of the unit and directed the landlord and tenant to clean the rental unit to allow for further treatments. The tenant performed some cleaning himself and the landlord's agents entered the unit on February 12 with the tenant's consent to assist him. The pest control technician directed the parties to wash every item of clothing and inspect and clean every item in the unit to discard dead cockroach bodies and look for eggs prior to further treatments of the unit. The parties agreed that the landlord's agents discarded a table, a rice cooker and a frying pan. The tenant alleged that the agents also removed 4 coats and 5 sets of sheets.

The agent who appeared at the hearing testified that she discarded the table, which was an older but not antique table which had been disassembled, on the advice of the pest control technician. She testified that the hollow legs were a hiding place for roaches and eggs and that the crevices of the table had roaches hiding therein. She testified that she attempted to clean the rice cooker and frying pan, but with no success and stated that the rice cooker was full of grease, maggots and cockroaches and that she was unable to clean it. She further testified that

the frying pan had been left soiled by her estimation for at least a year and was unable to be cleaned. She testified that the only sheets she cleaned were the sheets on the tenant's bed. The agent stated that she washed more than 20 loads of laundry for the tenant but because the coats could not be laundered, she placed them in a large plastic bag for the tenant to take to the dry cleaners. The agent denied having any of the items listed on the tenant's claim.

The tenant testified that he is certain the coats are no longer in the rental unit and stated that he had cooked rice with the rice cooker before and although it would have had a layer of rice inside, it should have been able to be cleaned. The tenant did not comment on the table, frying pan or sheets.

Analysis

A 10 day notice to end tenancy for unpaid rent or utilities can only be effective if rent or utilities are in arrears at the time the notice is served. In this case, the landlord agreed that no rental or utility arrears were owing at the time the Notice was served. As there is no basis for the Notice, I order that it be set aside and of no force or effect.

As the landlord does not have possession of any of the tenant's belongings, I dismiss the claim for an order compelling the landlord to return his belongings.

There is no provision in the *Residential Tenancy Act* which allows a landlord to remove or discard items from a tenant who is currently occupying a rental unit. I appreciate that with respect to the table, the landlord was acting on the instruction of the pest control company, but the landlord should have advised the tenant of the company's recommendation and if the tenant did not agree that the table should be discarded, the parties should have wrapped and stored the table and pursued arbitration for a determination as to whether the table should be removed.

Although the landlord did not have legal authority to arbitrarily discard the table, the tenant did not deny the severity of the infestation and I find it more likely than not that the table had no value. Therefore, although the landlord breached the Act, as the table had no value, I can award nothing to the tenant for this breach and I dismiss the claim for the value of the table.

The landlord's agent denied having discarded the coats and was very specific as to where she placed the coats. Although the tenant has not located the coats, I find it more likely than not that they are either in the unit somewhere or the tenant accidentally discarded them along with clothing he mentioned which no longer fit him. The landlord alleged and the tenant did not disagree that the unit had a significant amount of items therein and I find it entirely possible that the bag has simply been misplaced. I am unable to find that the landlord disposed of the coats and therefore dismiss the claim for recovery of their value.

The landlord's agent denied any knowledge of the sheets and as she was very forthright about the items which she discarded, I accept that she did not discard the sheets. I dismiss the claim for the value of the sheets as the tenant has not proven that he had the sheets or that the landlord removed them from the unit. I dismiss the claim for recovery of the value of the sheets.

The agent alleged that the rice cooker and frying pan could not be cleaned. Although the tenant claimed that he had used the rice cooker the week before, he also acknowledged that it had not been cleaned, which suggests that there was likely a buildup of food residue inside. The agent had the responsibility to clean insect bodies and eggs off of each item in the rental unit and to remove any food source which might attract more roaches. I find that the rice cooker and frying pan were likely food sources as they had not been cleaned and had a buildup of food residue. As was the case with the table, the agent did not have the authority to discard these items, but in order for the tenant to be successful in his monetary claim, he must prove that the items had some commercial value. I have no persuasive evidence before me that these items had any value and I find that the tenant has therefore not proven his claim. I dismiss the claim for recovery of the value of the rice cooker and frying pan.

The monetary claim is dismissed.

Although the tenant has been unsuccessful in the monetary claim, he had to file this claim because the landlord served him the Notice when they had no legal basis to do so and because the landlord discarded items without lawful authority. I therefore find that the tenant should recover the \$50.00 filing fee paid to bring his application and I award him \$50.00. The tenant may deduct \$50.00 from a future rental payment.

Conclusion

The Notice is set aside and the claims for a monetary order and the return of property are dismissed. The tenant may recover his filing fee from a future rental payment.

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 23, 2015

Residential Tenancy Branch

