



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Satgur Developments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application.

The Applicant stated that June 26, 2015 the Application for Dispute Resolution, the Notice of Hearing, documents the Applicant submitted to the Residential Tenancy Branch on June 26, 2015, and documents the Tenant submitted to the Residential Tenancy Branch on June 29, 2015 were sent to the Respondent, via registered mail. The Respondent acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On November 16, 2015 the Respondent submitted seven documents to the Residential Tenancy Branch. The Respondent stated that these documents were personally served to the Tenant's legal counsel on November 16, 2015. The Applicant t acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Applicant entitled to compensation for personal property that was discarded by the Respondent?

Background and Evidence

The Applicant stated that:

- he moved into the rental unit on August 15, 2013;
- the Witness was living in the rental unit in August of 2013;
- he paid the Witness \$350.00 for rent for August of 2013 and a security deposit of \$175.00;
- the Witness vacated the rental unit in late August of 2013; on September 03, 2015 he met with the Respondent and they verbally agreed that he could rent the unit for \$600.00 per month;
- he never paid a security deposit to the Respondent;
- he never paid to the Respondent because "he did not come to collect it";

- when his legal counsel went to the rental unit on October 06, 2013 the key to the unit did not work;
- his legal counsel looked inside the rental unit and determined that the rental unit was empty; and
- he assumes the landlord removed his personal property from the rental unit; and
- he estimates the value of the property removed from the rental unit to be over \$30,000.00.

The Respondent stated that:

- in August of 2013 he was acting as an agent for the owner of the rental unit;
- the owner of the rental unit has a written tenancy agreement with the Witness;
- he was not informed that the Applicant had moved into the rental unit with the Witness;
- he did not give the Applicant authority to sublet or lease the rental unit to the Witness;
- the Witness vacated the rental unit in early August of 2013;
- in late July or August of 2013 he had a discussion with the Applicant about renting in the residential complex, but they never agreed on an amount for rent and they never agreed to enter into a tenancy;
- the Applicant did not pay rent to him or the owner of the rental unit;
- he stopped acting as an agent for the landlord after the Witness moved out of the rental unit;
- he did not change the locks to the rental unit after the Witness moved out;
- he does not know if the owner of the rental unit changed the locks to the rental unit after the Witness moved out;
- he did not remove any property from the rental unit after the Witness moved out;
- he does not know if the owner of the rental unit removed property after the Witness moved out; and
- the owner of the rental unit is his brother-in-law so he allowed him to use his company when renting a disposal bin in October of 2013.

The Witness stated that:

- he does not specifically recall the date, but he believes he moved into the rental unit in early 2013;
- he believes the Respondent was his landlord during the latter portion of his tenancy, although he entered into a verbal tenancy agreement with a different person;
- he does not specifically recall the date, but he believes he moved out of the rental unit on August 01, 2013 or September 01, 2013;
- he allowed the Applicant to move into the rental unit sometime in the middle of August of 2013;
- he collected rent and a security deposit from the Applicant;
- the Applicant had personal property in the rental unit;
- the Respondent knew the Applicant had moved into the rental unit because they were discussing him remaining in the unit after the Witness vacated;
- in the discussions he overheard between the Witness and the Respondent he heard them talking about renting the entire residential complex and about renting just the rental unit; and

- in the discussions he overheard between the Witness and the Respondent he did not hear them agree on the amount of rent that would be charged for either the entire residential complex or the single rental unit.

The Respondent submitted an undated hand written letter which is signed by the Witness. In the letter the Witness declares, in part, that:

- he vacated the rental unit as of September 01, 2013;
- anything left in the house can be disposed of; and
- if anyone would like to rent the unit they must see the Respondent.

The Respondent submitted a typed document, dated September 01, 2013, which is signed by the Witness. In the document the Witness declares, in part, that:

- he mutually agrees to end the tenancy;
- he has left the unit for "more than 30 days";
- he has not given anyone rights or access to the unit;
- the "materials are my sole possessions and can be donated destroyed or removed and disposed of at the wish of the landlord"; and
- the unit has been "surrendered back to their possession as vacant without any other occupants or encumbrances".

The Witness stated that he signed both of the above documents under duress. When he was asked to explain this statement he stated that he signed both documents because the Respondent told him he would have his kids taken away from him if he did not sign the documents. He stated that he does not know how the Respondent could have had his kids taken away from him, he simply did not want to take that chance. The Respondent denies telling the Witness he would have his children taken from him if he did not sign the documents.

The Applicant submitted a document dated June 19th that was signed by the Witness. The Witness stated that he signed this letter on June 19, 2015, which was written by the Applicant. In this document he declared that after he moved out of the rental unit he signed a "termination of tenancy" with the "incentive of returning my washer/dryer". He did not raise this issue at the hearing so the Respondent was not given the opportunity to respond to this issue.

The Applicant submitted a photograph of a notice that he alleges he posted on the door of the rental unit on September 24, 2015. In this notice he declares that he is the tenant of the unit; that he has a verbal tenancy agreement; and that the Respondent is not accepted his rent of \$600.00.

Analysis

On the basis of the undisputed evidence I find that the Witness allowed the Applicant to move into the rental unit in August of 2013; that the Witness collected a security deposit and rent from the Applicant; and that the Respondent did not give the Applicant authority to move into the rental unit in August of 2013.

As the Applicant moved into the rental unit with the consent and on the authority of the Witness, who was the tenant at that time, I find that the Applicant was merely an occupant of the rental unit in August of 2015. As an occupant of a rental unit in August of 2013 the Applicant did not have the same rights and obligations as the Witness.

I find that the Applicant has submitted insufficient evidence to establish that he entered into a tenancy agreement with the Respondent. In reaching this conclusion I was heavily influenced by the fact the Respondent denies entering into an oral or written tenancy agreement with the Applicant.

In determining that there is insufficient evidence to establish that the Applicant entered into a tenancy agreement with the Respondent, I was also influenced by the undisputed evidence that the Respondent made no attempt to collect rent from the Applicant. In my view this corroborates the version of events provided by the Respondent, as I find it highly unlikely that he would not have collected rent if he believed the parties had entered into a tenancy agreement.

In determining that there is insufficient evidence to establish that the Applicant entered into a tenancy agreement with the Respondent I placed minimal weight on the documents the Applicant posted on the door on September 24, 2013. Although it is possible the Applicant believed the parties had entered into a tenancy agreement, his declaration that the Respondent is refusing to accept rent convinces me that the Respondent did not believe a tenancy existed.

I find that the Witness's testimony in regards to the alleged tenancy agreement has little evidentiary value as there is no suggestion that he overheard the parties enter into a tenancy agreement.

I find that the Witness's written declarations from 2013 have little evidentiary value in regards to the alleged tenancy agreement as they neither prove or disprove that the parties did not enter into a tenancy agreement after September 01, 2013 as the Applicant alleges.

I find that the Witness's written declarations from 2013 serve to revoke any license to occupy the rental unit that was given to the Applicant by the Witness. This conclusion is based on the Witness' written declaration that if anyone would like to rent the unit they must see the Respondent and that the rental unit is "surrendered back" to the landlord "without any other occupants or encumbrances".

In adjudicating this matter I have placed no weight on the Witness's testimony that he signed the documents from 2013 that were submitted in evidence because he was under duress. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Witness's testimony that the Respondent told him he would have his children taken away if he did not sign the documents or that refutes the Respondent's testimony that he did not tell the Witness he would have his children taken away.

Black's Law Dictionary defines "duress" as "threat of harm made to compel a person to do something against his or her will or judgment". In my view the threat to harm must be a credible threat before it can be determined that someone acted under duress. Even if I concluded that the Respondent did tell the Witness that he would have his children taken away if he did not sign the documents there is absolutely no evidence to suggest the Respondent had this power. I would therefore conclude that the threat to remove the Witness' children was nothing more than an idle threat and that a reasonable person would not have felt compelled to sign a document as a result of such a threat.

Even if the Witness was motivated to sign a mutual agreement to end the tenancy because the

Respondent promised to return a washer/dryer, as the Witness alleges in his written declaration of 2015, I could not conclude that this establishes his written declarations of 2013 are untrue. I therefore find that the Respondent acted reasonably when he concluded, on the basis of the written declarations of 2013, that the property in the rental unit was abandoned and that the Witness had not given anyone authority to remain in the rental unit.

As there is insufficient evidence to establish that the Applicant and the Respondent entered into a written or oral tenancy agreement, I find their relationship is not governed by the *Act*. I therefore do not have jurisdiction over the dispute between the Applicant and the Respondent and I dismiss the Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution as I do not have jurisdiction over the matter.

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 04, 2015

Residential Tenancy Branch

