



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, RPP, LRE

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to return the tenant's personal property / and an order suspending or setting conditions on the landlord's right to enter the rental unit. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Preliminary Matters

The landlord testified that she had not been served with a copy of the tenant's application, or the notice of hearing, or any of the documentary evidence submitted to the Residential Tenancy Branch (the "Branch") by the tenant in support of his application. The landlord testified that it was only as a result of her own contact with the Branch that she became aware of the hearing. Despite this the landlord stated that she was prepared to proceed with the hearing, principally in order to facilitate the return of the tenant's personal property which remains in her possession, and also to expedite a conclusion to her dealings with the tenant.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began in January 2015. Monthly rent of \$750.00 was due and payable in advance on the first day of each month, and a security deposit of \$375.00 was collected.

Arising from an application by the tenant, a previous hearing was convened on January 28, 2016, with both parties in attendance. However, the hearing did not proceed as the

tenant withdrew his application. In summary, the decision issued by that same date documents that the tenant concluded he “had other evidence he sought to obtain to support his claim.” It was also determined that the tenant had not served the landlord with the amended application concerning the monetary aspect of his claim.

Later, arising from applications filed by both parties, another hearing was convened on February 10, 2016. While the landlord was in attendance, the tenant did not appear. Pursuant to the decision issued by that same date, the tenant’s application was dismissed, while an order of possession and a monetary order were issued in favour of the landlord. The decision also made provision for the landlord to retain the security deposit. Subsequently, the tenant applied for review consideration, and by review consideration decision dated February 23, 2016, the tenant’s application was dismissed. In the result, the decision and orders issued by date of February 10, 2016 were upheld.

Thereafter, it is understood that the tenant vacated the unit on February 19, 2016, but provided no forwarding address. The landlord claims that while the tenant removed some of his personal property at that time, some of it was also left behind at the unit. After the landlord changed the locks to the unit on or about March 08, 2016, she later stored the tenant’s remaining personal property and began cleaning the unit.

It is understood that on March 12 & 15, 2016 the tenant returned to the unit, seeking to recover the personal property left behind. The landlord called Police and the tenant was instructed not to return to the unit. Presently, all of the tenant’s personal property which had been left behind is in storage. The tenant filed his application for dispute resolution on March 14, 2016. During the hearing the parties undertook to resolve the aspect of the dispute related to return of the tenant’s personal property.

Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the tenant’s application and my related findings are set out below.

An order instructing the landlord to return the tenant’s personal property;

Miscellaneous compensation related to personal property.

\$2,000.00: *clothing*

\$1,200.00: *leather sofa*

\$1,200.00: *dining room / kitchen set with chairs*

\$600.00: *3 hockey jerseys*

\$1,500.00: *X-Box & X-Box games*
\$3,000.00: *Native artwork*
 \$170.00: *3 zone bus pass*
 \$300.00: *flat screen television*
 \$300.00: *guitar*
\$1,000.00: *2 china cabinets*
 \$200.00: *dishes / baking pan*
 \$180.00: *tool drill set*
 \$500.00: *queen bed set*
 \$500.00: *double bed set*

During the hearing the landlord confirmed her understanding that most, if not all of the larger items identified above, appear to be in storage. However, the landlord was unable to confirm specifically what items may be contained in large plastic garbage bags, which might include clothing for example.

Section 63 of the Act addresses the **Opportunity to settle dispute**. Pursuant to this provision the parties achieved a partial resolution of the dispute during the hearing, and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenant himself will no longer contact the landlord directly;
- that the tenant's advocate (who was in attendance at the hearing), or a Ministry representative, will contact the landlord when financial support and transportation for moving have been made available to the tenant for taking possession of his personal property;
- that after being contacted by the tenant's advocate or a Ministry representative, the landlord will arrange for the tenant's personal property to be taken from storage and delivered to the unit property line for immediate pick up by the tenant at a specifically agreed upon date and time.

In view of the above settlement, and in the absence of sufficient evidence of a fully accurate inventory of the personal property, or sufficient evidence concerning the age, condition or current market value of the personal property, the tenant's application for miscellaneous compensation related to the personal property is hereby dismissed.

\$380.00: *labour & materials for painting in the unit*

In the absence of any receipts, or conclusive evidence of a formal agreement between the parties, pursuant to which the landlord agreed to compensate the tenant for either labour or materials for painting, this aspect of the application is hereby dismissed.

\$10,000.00: *aggravated damages*

The tenant has variously claimed that there was mold in the unit, that the landlord restricted access to laundry facilities, that the landlord withheld mail, that the landlord's parked vehicle restricted access to the unit, that the landlord failed to repair water leaks and a broken toilet, and so on. However, I find there is insufficient and inconclusive evidence to support these claims; specifically, there is no evidence before me around how the tenant may have addressed these concerns directly with the landlord during the tenancy. Further, I note the absence of a diligent pursuit of a remedy through the Branch until after the landlord had obtained an order of possession and a monetary order for unpaid rent. This aspect of the application must therefore be dismissed.

Conclusion

The parties settled a portion of the dispute pursuant to the RECORD OF SETTLEMENT, as above.

The tenant's application for compensation for alleged damage or loss under the Act, Regulation or tenancy agreement, including aggravated damages, is hereby dismissed.

As the tenancy has ended, the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit is hereby dismissed.

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: March 31, 2016

Residential Tenancy Branch

