



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP

Introduction

This was a hearing with respect to the tenant's application for a monetary award and for an order for the return of personal property. The hearing was conducted by conference call. The tenant's mother, acting as his agent called in and participated in the hearing. The tenant was unable to attend because he is currently incarcerated. The landlord called in and participated in the hearing. Her son-in-law also attended as her representative and as a witness.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Should an order be made directing the landlord to return personal property belonging to the tenant?

Background and Evidence

In the application for dispute resolution the tenant claimed that he was not given proper notice to end his tenancy. He was arrested on October 9, 2015 and held in custody. The tenant alleged that after his arrest the landlord put his personal belongings outside rental unit and allowed people to take his belongings.

The tenant's mother attended the hearing and testified on his behalf. She testified that after her son was arrested on October 9th, the landlord removed his belongings from the rental unit and placed them outside. His personal belongings as well as valuable tools and work equipment were taken by strangers. The tenant submitted a typed list of his belongings that were at the rental unit when he was arrested and now are missing. According to the tenant his missing belongings are worth a combined total of \$8,654.00. Apart from a typed list the tenant provided no other documents to verify the goods or their value. The tenant's agent did refer to items depicted in photographs submitted by the landlord.

The tenant's mother testified that it was not until October 15th that she obtained permission to act as her son's agent and collect his possessions from the rental unit. she said that she passed by the rental property on several occasions before October 15th and saw her son's belongings left outside the rental unit. She said that his expensive logging equipment and radios as well as bicycles were taken.

The landlord and her son-in-law acting as her representative provided a different version of events. The tenancy began in February, 2015. The monthly rent was \$775.00 and the tenant paid a security deposit of \$350.00 at the start of the tenancy. In September 1, 2015 the landlord and the tenant signed a mutual agreement to end the tenancy. As set out in the written agreement, the tenant agreed to move out of the rental unit and remove all his belongings by 2:00 P.M. on September 30th. He also agreed to pay \$75.00 and forfeit the \$350.00 security deposit for September 2015 rent.

The tenant refused to move on September 30th as agreed in writing. He did not pay rent for October on October 9, 2015 he was arrested by the police and taken into custody. The tenant's girlfriend who was living with him in the rental unit continued to stay in the unit until October 11th. On the morning of October 11th the landlord discovered that the tenant's girlfriend had moved out, leaving the door to the rental unit wide open. The landlord discovered that the tenant had changed the locks to the rental unit without providing the landlord with a key and she was unable to lock and secure the rental unit until the evening of October 12th when the locks were changed.

Mr. K.R., who claimed to be an acquaintance of the tenant, attended at the rental property. He told the landlord that he was a work acquaintance of the tenant and had come to pick up some of his property left with the tenant. The landlord testified that he removed from outside storage on the rental property two bicycles, an electric scooter and miscellaneous logging equipment. He gave the landlord his phone number.

The landlord and the landlord's representative testified that after securing the rental unit they began cleaning and making an inventory of the belongings left by the tenant as they were advised to do by an information officer at the Residential Tenancy Branch. The landlord submitted photographs to show the condition of the rental unit and the belongings left by the tenant.

The tenant's mother responded to the landlord's evidence; she said that K.R. was unknown to the tenant and the no one could be reached at the telephone number provided to the landlord.

The landlord's representative testified that the tenant's belongings were not left outside unattended as reported by the tenant's mother. He said that belongings were moved

outside during the day to enable cleaning and repairs to the rental unit to be performed. The landlord ceased creating an inventory of the tenant's belongings after his mother arrived to collect his goods. On October 18, 2015 the tenant's mother signed a document acknowledging that she took possession of property listed on the three attached pages. The landlord said that the tenant's mother told them that any other items left behind could be disposed of.

The landlord submitted an unfiled application for dispute resolution and a monetary order worksheet that set out claims for loss of rent and costs for cleaning and rubbish removal. The landlord said that she now understands that she must file her own separate application if she intends to make a claim against the tenant.

Analysis

The tenant has the burden of proving on a balance of probabilities that he suffered a loss due to the landlord's failure to comply with the *Act*, or due to her negligence, or breach of duty towards the tenant. The tenant must also prove his loss with evidence to establish the goods that he owned and their value.

I find that the tenant has not shown, on a balance of probabilities that the landlord is responsible for his lost belongings. The tenant agreed in writing to move out by September 30, 2015. He failed to do so and was then arrested and jailed. His girlfriend was left in occupation of the rental unit. She then moved out, leaving the rental unit unsecured. The landlord cannot be responsible for any goods taken by the tenant's girlfriend, or that may have been lost because she left the rental unit open and unsecured when she vacated. Other goods that were stored by the tenant in a carport outside the rental unit were taken by a person claiming to have permission or rights to possession of the goods. I find that the landlord is not liable for goods left outside the rental unit and removed by a person who purported to have the right and authority to remove the goods.

There is no basis for an order directing the landlord to return the tenant's personal property; the landlord does not have any goods belonging to the tenant. The tenant's mother removed all the listed goods and she authorized the landlord to dispose of any other belongings left in the rental unit and not listed.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: July 08, 2016

Residential Tenancy Branch