



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNSD, MNDC, FF, O

Introduction

This hearing took place in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for: the return of their personal property; the return of their security and pet damage deposits; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation, or tenancy agreement; “Other” undisclosed issues; and to recover their filing fee from the Landlords.

The male Landlord and both Tenants appeared for the hearing. However, only the Landlord and the female Tenant provided affirmed testimony during the hearing. The Landlord confirmed receipt of the Tenants’ Application. The Tenant confirmed receipt of the Landlord’s 89 pages of documentary and photographic evidence prior to the hearing. The Tenant confirmed that the only evidence they had provided prior to this hearing was rent receipts and a copy of the tenancy agreement; the Tenants confirmed that they were relying on their oral evidence to support their Application.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided.

Preliminary Issues

At the start of the hearing, the parties confirmed that the Landlords had been provided with a forwarding address on September 6, 2016 by text message. The Landlord confirmed that he had made an Application to keep the Tenants’ security and pet damage deposits on September 13, 2016; however his Application could not be scheduled to be heard in this hearing. Instead it was scheduled to be heard in March 2017 under a different file number which appears on the front page of this Decision. The Tenant confirmed that \$1,800.00 of their monetary claim related to the return of double their security and pet damage deposits.

As the issue of the Tenants’ security and pet damage deposits has been scheduled to be determined in the March 2017 hearing, I declined to deal with that matter in this hearing as all of the evidence the parties intend to rely on in relation to damages and

cleaning to the rental unit was not before me. Therefore, this portion of the Tenants' Application was dismissed.

Issue(s) to be Decided

- Did the Tenants abandon the rental unit?
- Are the Tenants entitled to the return of their personal property?
- Are the Tenants entitled to the cost of personal property disposed of by the Landlords?

Background and Evidence

Both parties agreed that this tenancy started on October 15, 2015 for the basement portion a residential home. The parties signed a tenancy agreement for a month to month tenancy and rent was established in the amount of \$900.00 payable on the first day of each month. The Tenants paid a \$450.00 security deposit and a \$450.00 pet damage deposit at the start of the tenancy which the Landlord still retains.

The Tenant testified that at the start of August 2016, they verbally informed the Landlords that they were looking for another place to move to as the relationship between them and the Landlords had deteriorated. The Tenant testified that the Landlord did not have any issue with the tenancy ending but did request they that give 30 days of notice to end the tenancy.

The Tenant explained that on August 15, 2016 they found another place to go to and she informed the Landlords that they would be vacating the rental unit on September 4, 2016. The Tenant testified that they informed the Landlord that they were going to sublet the rental unit with renters from another city and that the Landlord was ok with this. The Tenant explained that they wanted to sublet the rental unit because they did not want to cause the Landlord anxiety from having to find new renters as they were going away on vacation.

The Tenant confirmed that they vacated the rental unit on September 5, 2016 and informed the Landlord that he could keep their security and pet damage deposits for payment of rent for that month. The Tenant stated that they could not afford to pay rent for September 2016 because they were paying rent for the place they were moving to but were hoping that when their subtenants moved in on September 5, 2016 they would pay rent to the Landlords. The Tenant stated that she was not aware that she had to get the Landlord's consent in writing to sublet the rental unit and that a landlord can refuse permission to do so because this was a month to month tenancy and not a fixed term tenancy.

The Tenant testified that after they vacated the rental unit on September 5, 2016, they left behind some personal belongings which the Landlord disposed of. As a result, the Tenants seek compensation from the Landlord for these disposed items. These included: a grounding rod; a futon wooden frame, a wrought iron table, a wrought iron Christmas tree stand, step in posts for electrical fencing; two tires; and box of lye for soap making.

The Tenant testified that she was unable to verify the cost of each item being claimed as some were antique and some she had purchased from the internet. However, the Tenants estimated the total value of these items to be \$1,000.00 which they seek to claim from the Landlords.

The Landlord stated that on August 18, 2016 he had received an email from the Tenant informing him that they had found a new place to move to and that they wanted to sublet the rental unit to student renters from another city. The Landlord testified that he responded to the Tenants' email specifically informing them that they did not have permission to sublet the rental unit and that he required 30 days of notice to end the tenancy. The Landlord provided this email into evidence.

The Landlord testified that he was out of town and returned on September 5, 2016 by which point the Tenants had not paid rent. The Landlord texted the Tenants at which point they informed him that they had moved out and wanted to sublet the rental unit. The Landlord stated that he explained to the Tenants that he would consider the new renters the Tenants were proposing for rental of the unit but not as the Tenants' "sub-letters" but under a new and separate tenancy agreement after he had checked the renters out for the suitability as tenants.

The Landlord testified that he attended the rental unit on September 5, 2016 and looked through the rental unit windows to see that the Tenants had removed all their personal belongings and had left behind the few personal items they had testified to. The Landlord provided photographic evidence of state of the rental unit and the property that was left behind.

The Landlord testified that based on the fact that the Tenants had not paid rent and had explained to him that they were moving out of the rental unit and not returning, he deemed that the Tenants had abandoned the rental unit. The Landlord testified that he took possession back of the rental unit and disposed of the items which he asserted were less than \$500.00 in total value. The Landlord provided comparison evidence and quotes of similar items to show that the total amount was estimated to be \$116.03. Therefore, the Landlord denies the Tenants' monetary claim amount.

The Landlord testified that he had disposed of the Tenants' personal items left behind pursuant to the provisions of the Act and the Residential Tenancy Regulation. The Landlord stated that he had retained two pieces of plywood belonging to the Tenants which they were welcome to have back. The Landlord testified that the Tenants had not contacted him for the return of their personal property by September 9, 2016 which was the date their property was disposed of.

The Tenants agreed to meet with the Landlords on the day of this hearing at 11:00 p.m. to retrieve these two pieces of plywood.

Analysis

In determining this case, the first issue that must be decided is whether this tenancy ended in accordance with the Act. A finding on this matter will then allow me to determine the remainder of the issues on the Application. Therefore, I first turn my mind to how this tenancy ended.

Section 44(1) (d) of the Act provides that a tenancy may end if a tenant vacates or abandons a rental unit. Sections 24(1) and (2) of the Residential Tenancy Regulation (the "Regulation") provides for the circumstances which allow the Landlord to determine if the rental suite has been abandoned as follows:

- 24 (1) A landlord may consider that a tenant has abandoned personal property if**
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or**
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property**
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or**
 - (ii) from which the tenant has removed substantially all of his or her personal property.**
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment **only** if**
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or**
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.**

[Reproduced as written]

I have analysed the oral evidence of the Tenants along with the Landlords' oral, documentary, and photographic evidence provided to make findings based on the balance of probabilities.

I find the Tenants failed to pay rent for September 2016 on the day that it was due; in this case it was due on September 1, 2016. The Tenants had not provided the Landlords with any written notice to end the tenancy. As the tenancy agreement detailed that this was a month to month tenancy, the Tenants would have been required to give the Landlords one full rental months of written notice pursuant to Section 44(5) (1) of the Act. There is no evidence before me that the Tenants provided the Landlords with sufficient notice to have correctly ended the tenancy. Therefore, the Tenants would still have been required to pay for rent for September 2016 which they did not.

The Tenants submitted that they wanted to sublet the rental unit but that the Landlord had refused. In this respect, I turn to Section 34 of the Act. This states that a tenant must obtain the written consent of the landlord to sublet a rental unit and that consent by the landlord must not be unreasonably withheld **if** the tenancy agreement is a fixed term of six months or more. In this case, the tenancy agreement was a periodic tenancy and therefore, there was no requirement for the Landlords to consent to any sublet of the rental unit; neither is there any evidence that the Tenants obtained the Landlord's written consent to do so. Therefore, the Tenants were required to end the tenancy pursuant to the provisions of the Act which they did not do.

I find that the Tenant's oral evidence coupled with the written communication that the Tenants had with the Landlord by text message and email, supports a finding that the Tenants vacated the rental unit on September 5, 2016 and had no intention of returning to the rental unit. I find that a request to the Landlord to sublet the rental unit to students from another city after they had vacated the rental unit is not sufficient for me to conclude that the Tenants intended on returning to the rental unit. Rather, I find that is evidence suggests that the Tenants failed to clearly inform the Landlords that the tenancy had not yet ended and that they intended to return to the rental unit to continue the tenancy.

In addition, I accept the Landlord's photographic evidence that the type of personal property left behind by the Tenants indicated that there was no intention that they would be returning to the rental unit. I find the Landlord providing convincing comparison evidence to verify the value of the personal property left behind by the Tenants was well below \$500.00.

Based on the foregoing, I conclude that the Landlords rightly determined that the Tenants had abandoned their personal property left behind after they had moved out on September 5, 2016 because the circumstances were such that the Tenants could not have reasonably expected to return to the rental unit.

Section 25 of the Residential Tenancy Regulation states that if a tenant has abandoned personal property, a landlord may dispose of that property if it has a total market value of less than \$500.00. In this case, I find the Landlord correctly disposed of the Tenants' abandoned personal property as there is sufficient evidence before me that the property was worth less than \$500.00. In this respect, the Tenants failed to provide any rebuttal evidence to dispute the Landlord's calculation or to verify the value of the personal property left behind was worth \$1,000.00 as estimated and claimed by them. Furthermore, I find the Landlords could have also disposed of the plywood they currently hold but have now agreed to return this back to the Tenants forthwith.

Conclusion

Based on the foregoing findings, I find the Tenants have failed to prove that the Landlords dealt with their personal property contrary to the provisions of the Act and the Regulation. The Tenants have failed to prove that they are entitled to \$1,000.00 in compensation for the disposal of their personal property. As a result, I dismiss the Tenants' Application without leave to re-apply.

The parties are still required to appear for the hearing scheduled to take place in March 2016 to hear the Landlords' monetary claim. However, I would encourage the parties to settle that matter outside of the dispute resolution proceedings as mutual agreement may be better resolution than a decision forced upon the parties. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 14, 2016

Residential Tenancy Branch