



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Are the tenants entitled to a monetary order for loss of personal items?

Background and Evidence

The parties agreed the tenancy commenced on October 25, 2016. Rent in the amount of \$1,000.00 was payable. The tenants did not pay a security deposit. The tenancy ended on or about November 30, 2016, based on a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenants claim as follows:

a.	Loss of personal belongings	\$25,000.00
	Total claimed	\$25,000.00

The tenant RL testified that they left the premises on November 29, 2016. RL stated that they talked to the landlord and on December 1, 2016, they attend the rental unit and grabbed a suite case of clothing.

RL testified that on the December 4, 2016, they got an email indicating their belongings had been thrown out. RL stated that they are 45 years and have accumulated at least \$25,000.00 in belongings.

Filed in evidence is a hand written list of items said to be missing.

The landlords testified that when the tenants moved in to the rental unit they only came with a very small trailer, which held a bed and an old dresser. The landlords stated that the tenants used their couch and other items such as pots and pans.

The landlords testified that on December 1, 2016, RL attended to the rental unit to remove their belongings. The landlord stated RL said that they would come back on the December 2, 2016, to move the remaining items, clean and make repairs. The landlord stated that the tenants did not return to the premises and they sent the tenants messages on December 2, and 3, indicating that they had until the December 4, 2016, to remove the balance of their items and make repairs, as they had a new renter for December 15, 2016.

The landlords testified that the tenants did not attend the rental unit. The landlord stated that they gave the tenant's daughter everything that was considered irreplaceable this included photographs, belonging of the children, a 12 inch TV and a DVD player. The landlords stated that everything else was garbage and was dispose of.

The landlords testified that the tenants are not being truthful about their belongings. The landlord stated the tenants have a long history of theft, fraud and not telling the truth. The landlord stated that the rental unit was left in a horrible state, there was a knife stabbed into the drywall, needles left everywhere and the tenants had splattered paint on the walls using a roller.

Filed in evidence in support of the landlords are facebook messages, photographs support damage to the rental unit and court service online documents showing, extensive criminal records for the tenants, which included theft, fraud, and making a false representation in regards to a claim.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I have reviewed the evidence of the parties. The landlord provided a large amount of facebook messages between the parties, which I find significant, as there is evidence of both parties exchanging illicit drugs, such as heroin. While these are not relevant to my decision, I find they are noteworthy because both parties are engaging in illegal activities.

In this case, there are facebook messages sent to the tenants December 2, and 3, 2016. The messages inform the tenants that they have until the December 4 2016, to retrieve the remained of their items left behind and make the repairs. On December 4, 2016, the landlord sent a final message to the tenants.

On December 4, 2016, at 9:32 pm, the tenant responses,

“Sorry I didn’t get whole off you sooner like I said I was in hospital, and never had a phone, so I will do all the repaired before I take anything with me, and I am not with R... anymore, sorry ..., please let me make it right, its all I own, special pictures and family stuff.”

[Reproduced as written]

I accept the evidence of the landlords that the tenants only brought with them a small amount of belongings in a small trailer; this included a bed and old dresser. The tenants did not deny this at the hearing. The tenants further used furniture such as a couch and pots and pans and other items that belonged to the landlord. This was not denied by the tenants. I find it would not be reasonable for the tenants to use items belonging to the landlords if they in fact had their own.

In this case I accept the evidence of the landlord that they returned to the tenant's daughter photographs, belongings that were the children's, a 12 inch TV, and DVD player. While the tenants denied this at the hearing, they did not have their daughter attend the hearing to testify on their behalf, which would have been reasonable as this statement was filed in the documentary evidence of the landlord.

Further, the evidence of the landlord was that the balance of the items left behind was garbage. There is no requirement under the Act to retain garbage.

While the tenants provided a list of items said to be lost and an amount assigned to the items, they did not provide any testimony regarding these items at the hearing, such as the description of the items, the age of the items or the condition of the items or how they arrived at the amount claimed. RL simply stated that they are 45 years old and it would be reasonable for them to have at least \$25,000.00 in belongings.

However, I find that standing alone is not sufficient evidence that these items existed or the market value of the items. The onus is on the tenants to prove a violation of the Act by the landlord, and the market value of the item at the time of the loss.

The market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any obligation to buy or to sell and both having reasonable knowledge of relevant facts, such as age and condition.

Based on the above, I find the tenants have failed to prove sufficient evidence to support their claim. Therefore, I dismiss the tenants' claim without leave to reapply.

Conclusion

The tenants' application is 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: February 06, 2017

Residential Tenancy Branch