



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- an order requiring the landlords to return the tenant's personal property, pursuant to section 65.

The two landlords, male and female, the landlords' agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both landlords confirmed that their agent, who is also a tenant at the rental property, had authority to speak on their behalf at this hearing. The male landlord is the property manager of the rental unit and the female landlord is the owner of the rental unit.

This hearing lasted approximately 85 minutes total. The hearing began at 11:00 a.m. The male landlord joined the conference late at approximately 11:25 a.m. Due to technical issues, I was required to briefly leave the conference from approximately 12:00 p.m. to 12:06 p.m., while the parties remained on the line. I then rejoined the conference at 12:06 p.m. until it concluded at approximately 12:25 p.m.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application.

The tenant provided some written evidence for this hearing, including a letter from the male landlord, a 2017 property assessment notice for the rental property, and a receipt for a payment by the tenant in the amount of \$6.70 from the provincial assessment

company. The tenant did not submit any other written evidence for this hearing. He claimed that he wanted to submit evidence after the hearing, but I notified him that all of his evidence was due prior to the hearing in accordance with the Residential Tenancy Branch ("RTB") *Rules of Procedure*. I notified the tenant that he filed his application on February 2, 2017, well in advance of the hearing date on March 3, 2017, and that he had more than enough time to gather his evidence prior to the hearing date and submit it to the landlords and the RTB. I also note that the tenant vacated the rental unit on November 15, 2016 and chose to file his claim much later in February 2017, so all of his evidence should have been known to him prior to his application filing, and submitted in accordance with the RTB *Rules of Procedure*.

The landlords confirmed that they did not serve the tenant with their written evidence package, only the RTB. I informed both parties that I could not consider the landlords' written evidence package at the hearing or in my decision because it was not served to the tenant, as required by Rule 3.1 of the RTB *Rules of Procedure*.

During the hearing, the tenant confirmed that he only wished to pursue a monetary claim for \$1,500.00 not the \$7,000.00 for which he originally applied. As I found no prejudice to the parties in the tenant reducing his monetary claim, I allowed the tenant to make this amendment, pursuant to section 64(3)(c) of the *Act*.

During the hearing, the parties confirmed that the female landlord is the owner of the rental property and she does not reside there, nor does she share a kitchen or bathroom with the tenant. Only the landlord's agent lives at the rental unit and previously shared a kitchen and bathroom with the tenant, but she is not the owner of the rental property. Therefore, I have jurisdiction to hear this matter, as it is not excluded by section 4(c) of the *Act*.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to return the tenant's personal property?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on May 1, 2016 and ended on November 15, 2016, when the landlord changed the locks to the rental unit and the tenant was unable to regain access. Monthly rent in the amount of \$485.00 was payable on the 15th day of each month. A security deposit of \$250.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed, only a verbal agreement was reached. The rental unit is a room in a house shared with other tenants, including the landlords' agent.

The tenant said that after he was locked out of the rental unit, he went back to the unit with the police in order to retrieve his belongings on November 29, 2016. He claimed that the police told him that all of his belongings were removed from the unit by the landlords. The landlords claimed that they have all of the tenant's belongings in storage and that they have been paying for the storage costs and are willing to return the tenant's property to him.

The tenant seeks to recover the \$250.00 security deposit that he paid to the landlords and the landlords agreed during the hearing, to return it to the tenant. The tenant seeks to recover \$250.00 for a half month's rent for November 2016, which he said he paid to the landlords at the rental unit. The tenant said that the receipt for the rent payment was locked inside the rental unit, for which the landlords refused to provide access. The tenant stated that he was locked out of the unit on November 15, 2016, so he should not have to pay rent to the landlords from November 15 to 30, 2016. The landlords disputed the tenant's claim, stating that he never paid any rent to them for any part of November 2016.

The tenant seeks \$500.00 for first month's rent and \$500.00 for last month's rent, which he said he had to pay to his new landlord for a new unit after he was locked out of the rental unit by the landlords. The landlords disputed the tenant's claims.

Analysis

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Agreement

During the hearing, both parties agreed that one of the landlords' employees will return the tenant's security deposit of \$250.00 to the tenant by way of a cheque to be provided to the tenant in person at the rental unit at 6:00 p.m. on March 15, 2017.

During the hearing, the landlords agreed that one of their employees would meet the tenant at the rental unit at 6:00 p.m. on March 15, 2017 in order to return the tenant's personal property that was left behind in the rental unit. I order both parties to comply with the above agreement. If the landlords' employee fails to show up at the rental unit with the tenant's property while the tenant is present at 6:00 p.m. on March 15, 2017, or the tenant's property has been disposed of by the landlords, I allow the tenant leave to reapply for a monetary award for the cost of this personal property. If the tenant fails to show up at the rental unit at 6:00 p.m. on March 15, 2017, while the landlords' employee is present, the tenant does not have leave to reapply for a monetary award for the cost of this personal property. Both parties were notified of the above directions during the hearing.

Monetary Claim

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's claim in the amount of \$500.00 for first month's rent and \$500.00 for last month's rent for the tenant's new unit, without leave to reapply. The tenant did not provide receipts from his new landlord for the above payments, nor did he provide any other documentation besides receipts, such as bank documents. The tenant did not provide a written tenancy agreement or a letter from his new landlord showing that he entered into a new tenancy and was required to pay the above amounts.

I dismiss the tenant's claim in the amount of \$250.00 for a half month's rent at the rental unit for November 2016. The tenant did not provide a receipt for the above payment. Even if this receipt was locked inside the rental unit, the tenant failed to provide other

supporting documentation such as bank statements to show that he withdrew cash for rent, a cancelled cheque to show that the landlords cashed the rent payment, a money order or certified cheque to show that the bank issued the payment in the landlords' names or other such documentation. The landlords all testified that rent was not paid by the tenant for November 2016.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$250.00 against the landlord(s) for the security deposit. This order is only to be used if the landlord(s) fail to pay the tenant \$250.00 as per their above agreement. The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible after a failure to comply with their agreement. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the landlords to provide the tenant with his personal property at 6:00 p.m. on March 15, 2017. If the landlords' employee fails to show up at the rental unit with the tenant's property while the tenant is present at 6:00 p.m. on March 15, 2017, or the tenant's property has been disposed of by the landlords, I allow the tenant leave to reapply for a monetary award for the cost of this personal property. If the tenant fails to show up at the rental unit at 6:00 p.m. on March 15, 2017, while the landlords' employee is present, the tenant does not have leave to reapply for a monetary award for the cost of this personal property.

The tenant's application for a monetary order for \$1,250.00 for November 2016 rent and first and last month's rent for his new unit, 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: March 23, 2017

Residential Tenancy Branch