



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, O, RPP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on March 3, 2017. The Tenant applied for the following issues:

- for the cost of emergency repairs;
- for the return of her security deposit;
- for money owed or compensation under the *Residential Tenancy Act* (the “Act”), regulation, and/or the tenancy agreement;
- for “Other” issues; and
- for the return of her personal property.

The Tenant, the Landlord, the current owner of the rental property, and the property manager appeared for the hearing. All testimony was provided under affirmation.

The owner confirmed receipt of the Tenant’s Application. The parties also confirmed receipt of each other’s documentary and photographic evidence served prior to this hearing. The Tenant confirmed receipt of the Landlord’s video evidence provided on a USB stick. The hearing process was explained to the parties and no questions on how the proceedings would be conducted were raised by the parties. The parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Tenant entitled to the return of her personal property and monetary compensation associated with this property?
- Has the Tenant named the correct Landlord for her claim for emergency repairs?
- What is to happen to the Tenant’s security deposit?

Background and Evidence

The parties agreed that this tenancy for the occupancy of a mobile home started with the Tenant and the first landlords on May 1, 2007 pursuant to a written tenancy

agreement on a month to month basis. The rent for this tenancy has always been \$650.00 payable on the first day of each month. The tenancy was taken over by the second landlords in March 2008.

The second landlords sold the property to the purchaser, who is the landlord named on the Tenant's Application and is herein referred to as the "Landlord" in this Decision. The Tenant was then served by the second landlords with a 1 month notice to end tenancy for cause (the "1 Month Notice") on July 26, 2016. The 1 Month Notice had a vacancy date of September 1, 2016.

The Tenant testified that she paid the first landlords a security deposit of \$325.00 at the start of the tenancy which had not been returned to her. The Tenant provided a copy of the receipt into evidence which she claims shows the security deposit was paid. The owner testified that they have not received any security deposit from the first or second landlords as part of the sale of the property and submitted that the receipt the Tenant provided showing payment of a security deposit is not clear and legible. The Tenant testified that she had provided her forwarding address to the Landlord for the return of her security deposit through the service of this Application which she sent to the Landlord by registered mail on March 15, 2017. The owner explained that in response the Landlord had filed an application to keep the Tenant's security deposit and this matter was scheduled to be heard in a separate hearing in August 2017.

After the Tenant was served with the 1 Month Notice, the Tenant applied to dispute it. A hearing was scheduled to hear that matter on September 29, 2016. In that hearing there was no appearance by the second landlords. However, the Tenant informed the Arbitrator that she was in the process of moving out of the rental unit and therefore, there were no legal findings to be made on the 1 Month Notice. As a result, the Arbitrator dismissed the Tenant's application to dispute the 1 Month Notice in a decision dated September 29, 2016.

The owner testified that the Tenant still remained at the rental unit after the vacancy date on the 1 Month Notice. The owner explained that the second landlords were not made aware of the September 29, 2016 hearing. However, as the Tenant did not have the 1 Month Notice cancelled and indicated that she was moving out, no further action was taken by the Landlord or the second landlords with respect to the September 29, 2016 decision.

The owner testified that they visited the rental unit on September 1, 2016 to meet the Tenant and find out when she would be moving as the vacancy date on 1 Month Notice had expired. The owner testified that they could see the Tenant was in the process of

moving but there was large amount of the Tenant's personal property that had already been placed outside of the rental unit. The owner testified that the Tenant refused to come out of the rental unit and shouted verbal abuse stating she would be moving out by the end of the month.

The owner testified that during the end of September 2016 they offered to help the Tenant to move as it appeared as the Tenant had not completed the process of move out. The owner testified that the Tenant was informed the Landlord would delay the process of demolishing the rental unit until October 15, 2016 to allow the Tenant more time to vacate and move all her personal property from within and outside the rental unit. In addition, the Landlord told the Tenant that they would be having a dumpster placed on the property on October 15, 2016 in order to assist with the cleanup of the rental property. The owner testified that the Tenant was happy about this as there were items there that she did not want to take with her.

The Landlord referred to text message evidence between the Tenant and the property manager in which the property manager asked several times when the Tenant would be vacating the property and offered assistance to do so. The owner testified that each time the question was posed, the Tenant responded stating that she would be moving out the following day. On October 22, 2016, the Tenant texted the property manager informing that she would be vacating the rental unit by the end of October 23, 2016.

The owner testified that the property manager contacted the Tenant twice by text message on October 24, 2016 but there was no reply from the Tenant. The owner testified that the dumpster arrived on October 27, 2016 and an altercation occurred between the Tenant and the Landlord as to where the dumpster was to be placed because the Landlord wanted it be placed where the Tenant had parked her car. Eventually, the Tenant moved her car and left the property and did not return back.

The owner testified that the property manager texted the Tenant on October 27, 2016 to ask the Tenant what was going on but there was no reply. The owner stated that based on the lack of communication and response to the messages sent to the Tenant, and the fact that the Tenant had not paid any rent for October 2016, they determined the Tenant had abandoned the rental unit.

The Landlord provided an inventory of the property left behind by the Tenant which included 53 items. The owner testified that the items, which were disposed of into the dumpster, were items that were unsanitary and had mold growing in them. The owner testified that the Tenant had left these belongings outside of the rental property under a

tarp which had been compromised by rain and the covered items had been rendered unsanitary.

The owner testified that the items that were sanitary and of value were then placed into storage where they continue to remain at the cost of the Landlord. The Landlord provided video and photographic evidence of the items left behind by the Tenant.

The owner testified that on November 2 and on November 7, 2016, they saw the Tenant pull up to the rental property who then left without saying anything or speaking to them.

In the interim time period the Tenant had filed an application asking to deal with the same matters elected on this Application for this hearing. On January 25, 2017, a hearing took place between the parties and myself to determine these issues. However, the Tenant did not have all her evidence and I allowed the Tenant to withdraw that application with leave to re-apply. I also encouraged the parties to come to agreement on the return of the Tenant's personal property outside of the dispute resolution process. As a result, the property manager attempted to contact the Tenant on January 31, 2017 by text message and e-mail using the email address provided by the Tenant in the January 25, 2016 hearing in an effort to mitigate their storage costs and arrange for the return of the Tenant's personal property. However, there was no answer from the Tenant. The Landlord provided evidence of this communication.

The Landlord stated that pursuant to the abandonment regulation, they proceeded to put an advertisement in the local paper in February 2017 for the Tenant's personal property which was provided into evidence. The owner testified that the Tenant was again contacted on February 14, 2017 by text message and email to advise that the stored items would be disposed of after 30 days as the items had been listed in the local paper pursuant to the abandonment regulations.

The Tenant confirmed the text message conversation she had with the property manager and stated that she had met with the Landlord on September 1, 2016 during which time no altercation occurred. The Tenant stated that she was intending to leave the property at the end of September 2016 but this became difficult due to a death in the family. The Tenant stated that she just asked for more time and was moving out slowly.

The Tenant claims that when the Landlord had the dumpster placed onto the rental property, this blocked her vehicle access to the rental unit which made it difficult to move her belongings. The Tenant provided a photograph into evidence which shows the dumpster was placed into the middle of the driveway.

The Tenant confirmed that she had not communicated with the Landlord in writing, by text message, or by email about the restriction of access to the rental property by the dumpster and that this was the reason why she was unable to move her property.

The Tenant confirmed that she had not contacted the Landlord after the January 25, 2017 hearing to get her personal property back that was being stored by the Landlord. The Tenant also confirmed that she did not respond to the property manager's text message regarding the personal property being advertised in the local paper. The Tenant submitted that she did not do this because she did not have a phone number for the Landlord but acknowledged that she could have easily contacted the property manager whom she had been communicating with during the end of the tenancy.

The owner disputed the Tenant's evidence that the driveway was blocked by the dumpster. The owner pointed me to the Tenant's photographs showing that there were other means of access to the rental unit from the side of the property and another shared driveway entrance which was accessible from the side that the Landlord was occupying. The Tenant stated that these other areas the owner referred to could not be accessed with a car.

The Tenant provided a list of items the Landlord is required to return and also assigned each of the items a cost which she now claims from the Landlord.

The Tenant also claims for the cost of a hot water tank and the repairs associated with it. However, the Tenant confirmed during the hearing that her alleged agreement for her to do these repairs stemmed from an agreement she had with the second landlords and confirmed that the Landlord had no involvement in this.

The owner submitted that while they could have easily disposed of the Tenant's personal property as they had followed the abandonment regulations, they were still willing to give the Tenant back her personal property to settle the matters in this hearing. However, the Tenant was not willing to settle the matter by mutual resolution.

Analysis

I first turn my mind to the Tenant's request for the return of her security deposit. In my Decision rendered to the parties on January 25, 2017, I had specifically informed the Tenant that in order for her security deposit to be returned to her she must provide the Landlord with a forwarding address in writing. However, that address cannot be served through the service of an application. Therefore, I find the Tenant's request for the return of her security deposit through this Application is premature and cannot be decided in this Decision. However, in the alternative, the Landlord has already filed for

the retention of the Tenant's security deposit and that matter has been scheduled to be determined in the August 2017 hearing. The parties must provide all of their evidence pertaining to the payment of a security deposit for that hearing. Therefore, I dismiss the Tenant's request for the return of her security deposit as that matter will be dealt with in the August 2017 hearing.

With respect to the Tenant's claim for costs associated with the hot water tank in the rental unit during the time the second landlords were the owners of the rental unit, I find the Tenant has named the wrong party. The Landlord named on the Application was not party or privy to any such repair agreement. Therefore, the Tenant's claim for emergency repairs is dismissed with leave to re-apply against the second landlords. The Tenant is cautioned that she bears the burden to prove that claim.

With respect to the Tenant's request for the return of her personal property and the monetary relief she seeks for these items, I make the following findings. I accept the evidence before me that the tenancy ended with the 1 Month Notice. While the Tenant had disputed the 1 Month Notice, it was not cancelled in the September 29, 2016 hearing and neither was the tenancy allowed to continue. Instead that Arbitrator dismissed the Tenant's application on the Tenant's own evidence that she was moving out of the rental unit.

I consider this convincing evidence that the Tenant had no intention of continuing to reside at the rental unit and coupled with the text message evidence provided by the Landlord into evidence, I find the Tenant continued to give the Landlord, the owner, and the property manager, the impression that her move out date in October 2016 was imminent.

The Tenant relies on one photograph as evidence to show that the Landlord blocked her vehicle access to the rental property and this was the reason why she was not able to move the remainder of her personal property left behind on October 27, 2016. However, I am not satisfied by this evidence alone that the Tenant had no other means of vehicle access to the rental unit as the owner provided equally probable areas where the Tenant could have obtained vehicle access to the rental unit. In addition, I also make this finding on the failure of the Tenant to expeditiously address this issue with the Landlord and the property manager. I accept the text message evidence that the property manager and the Tenant had communicated in October 2016 regarding the date the Tenant was going to be moving out. Therefore, it would have been a reasonable expectation and requirement that the Tenant would have communicated her concerns to the Landlord or the property manager about the alleged lack of access to the rental unit, especially if this was hindering the Tenant from getting to her personal

property. Instead the evidence before me is that the Tenant made no attempt or efforts to contact the Landlord regarding the return of her personal property either at the time she claims to have been denied access or any time after the tenancy ended.

Section 44(1) (d) of the Act provides that a tenancy may end if a tenant vacates or abandons a rental unit. Part 24(1) and (2) of the *Residential Tenancy Regulation* (the "Regulation") provides for the circumstances which allow a 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.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

[Reproduced as written]

Based on the foregoing provisions of the Regulation, I find the evidence before me shows that the Tenant left the rental unit on October 27, 2016 without paying any rent and over holding the tenancy after the vacancy date on the 1 Month Notice had expired. I find the lack of communication by the Tenant with the Landlord, the owner, or the property manager after she left the rental unit on this date justified the conclusion that the Tenant had no intention to return to the rental unit to collect the remainder of her belongings. The abandonment Regulations continue to state:

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,*
- (b) keep a written inventory of the property,*
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and*
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.*

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,*
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or*
- (c) the storage of the property would be unsanitary or unsafe.*

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

26 (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [disposal of personal property], the landlord may, before returning the property, require the tenant to

- (a) reimburse the landlord for his or her reasonable costs of*
 - (i) removing and storing the property, and*
 - (ii) a search required to comply with section 27 [notice of disposition], and*
- (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.*

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

[Reproduced as written]

Having examined the Landlord's photographic and video evidence, I find the Landlord complied with the Regulation in dealing properly with the Tenant's personal property. I

accept the Landlord's video and photographic evidence that some of the property had to be disposed of due to the unsanitary condition and the little value it had. I find the Landlord dealt with the remainder of the Tenant's personal property pursuant to the Regulation by keeping an itemised inventory list of the items disposed of and stored. I find the Tenant has failed to disclose sufficient evidence that she contacted the Landlord to get this property back, despite several attempts that were made by the parties for the Landlord to make arrangements for the return of these items.

During the January 25, 2017 hearing, I had informed the parties to discuss the return of the Tenant's personal property outside of the dispute resolution process. Despite the Landlord providing evidence that an attempt was made to contact the Tenant, the Tenant did not respond. The Tenant states that she did not have a contact number for the Landlord but I find that the Tenant had other means of contacting the Landlord, such a text message or a reply to the email that was sent to her in order to resolve this matter. In this respect, I find the Tenant failed to mitigate loss as required by Section 7(2) of the Act.

Having considered the totality of the evidence from both parties, I find the Tenant failed to provide convincing and compelling evidence that the Landlord prohibited her from removing her personal property at the end of the tenancy. I find the Landlord's evidence was compelling enough to justify the Tenant's property that was disposed of and that the decision that the property had been abandoned was correctly made. I find the Tenant had ample opportunity to retrieve the items stored by the Landlord but has not taken reasonable steps to obtain the return of it and now seeks to put the burden on the Landlord to return it without any cost to her. In this respect the Tenant has not mitigated loss. Therefore, I dismiss the Tenant's request for the return of her personal property and for monetary compensation associated with the items claimed.

Pursuant to part 26 of the Regulation, the Tenant must pay the Landlord the storage costs of the property he currently holds. If the Tenant does not, the Landlord may deal with the personal property pursuant to the Regulation.

Conclusion

The Tenant's Application for the return of her security deposit is dismissed because it is premature. The return of the Tenant's security deposit will be dealt with in the August 2017 hearing through the Landlord's monetary claim.

The Tenant's claim for the cost of emergency repairs is dismissed. The Tenant has leave to re-apply for this amount from the second landlords.

The Tenant's Application for the return of her personal property and monetary compensation is dismissed **without** leave to re-apply as the Landlord has dealt correctly with the Tenant's personal property.

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: April 20, 2017

Residential Tenancy Branch