



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, RP, RPP, OPT, AAT, FF, O

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on April 19, 2017.

The Tenant and one of the Landlords appeared for the hearing and provided affirmed testimony. The hearing process was explained and no questions were asked on how the proceedings would be conducted. The Landlord confirmed receipt of the Tenant's Application and both parties confirmed receipt of each other's documentary evidence all of which was served prior to this hearing.

The Tenant applied for the following issues:

- to cancel a notice to end tenancy for the landlord's use of the property and for more time to cancel the notice to end tenancy. These issues were dismissed because the Tenant had not been issued with a proper legal notice to end tenancy that was compliant with the *Residential Tenancy Act* (the "Act").
- To make repairs to the rental unit. This was dismissed because the Tenant stated that this was a clerical error on the Application.
- For an Order of Possession to get back into the rental unit and to allow access to the Tenant to the rental unit. These issues were dismissed because the Tenant confirmed that he no longer wanted to live in or return to the rental unit and was only appearing for the hearing to get his personal property back and monetary compensation
- To recover the filing fee and for "Other" issues. These issues were dismissed because the Tenant had his filing fee waived and no further issues were before me.

The Tenant confirmed the only issues he wanted to be deal with in this hearing was for the Landlord to return his personal property and his claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The hearing continued to hear evidence from both parties on these issues as follows.

Issues to be Decided

- Is the Landlord to be ordered to return the Tenant's personal property?
- Is the Landlord to pay the Tenant compensation for boarding the Tenant's dog?
- Is the Landlord to pay the Tenant 3.5 months of rent in monetary compensation?

Background and Evidence

The parties agreed that this was a verbal tenancy that started on April 15, 2015 on a month to month basis. Rent for the basement unit of the residential home was \$700.00 payable on the first day of each month. By the time the tenancy ended the Tenant was paying \$900.00 in rent. The Tenant did not pay a security deposit.

The Tenant stated that in August 2015, the Landlord informed him that he needed to do some renovations and repairs to the rental unit to bring it into compliance with the city by-laws and that he needed the Tenant to move out of the rental unit in order to do so. However, the Landlord did not ask the Tenant to move out of the rental unit until February 16, 2017 at which point the Landlord asked him to pack up all of his personal property and place it into the rental property garage. The Landlord informed the Tenant that he would be accommodated in a room in a motel owed by the Landlord.

The Tenant testified that he was asked to move out in two days' time and that the Tenant was not allowed to bring his dog with him to the motel. As a result, the Tenant boarded his dog in a kennel that charged him \$17.00 per day. The Tenant provided a copy of an email which indicated dog boarding for a period of February 15, 2017 to April 30, 2017. The Tenant explained that the actual invoice was with a family member and he was not able to produce it for this hearing. The Tenant seeks to claim a total of \$1,275.00 from the Landlord for dog boarding.

The Tenant stated that he was informed that the work was going to take one week as it only involved minor renovations. However, the work carried on into March 2017 and the Tenant continued to pay rent in exchange for living at the Landlord's motel. The Tenant explained that he did briefly move back into the rental unit at the end of March 2017, but was told to leave back to the motel as the city was not satisfied of the work that the Landlord had undertaken.

The Tenant stated that he went back to the Landlord's motel and continued to pay rent for April 2017. The Tenant stated that in April 2017 he received a letter from the

Landlord informing him that that the Landlord was not successful in legalizing the rental unit and therefore the tenancy would have to end at the end of April 2017.

The Tenant testified that since this time, he has been trying to get back his personal property which is being stored in the garage to the rental unit. The Tenant also stated that he has a dresser in the rental unit and a vehicle parked on the side of the residential property. The Tenant explained that despite repeated arrangements with the Landlord and his family to recover these items, he has not been able to get his personal property because they do not turn up. The Tenant claims a rent rebate of 3.5 months for the time he was not residing in the rental unit and was in the Landlord's motel.

The Landlord stated that he had asked the Tenant to leave the rental unit while he conducted extensive renovation work to legalize the rental unit and bring it into compliance with the city by-laws. However, despite doing these renovations, the Landlord testified that he was unable to get a permit to rent out the unit and therefore had no choice but to end the tenancy. The Landlord was informed during the hearing that pursuant to Section 44 of the Act, he was not allowed to unilaterally end the tenancy with a written letter to the Tenant.

The Landlord testified that at no point was the Tenant informed that he was unable to bring his dog to the motel room. The Landlord testified that his motel accepts pets and there are many guests there that do have pets. The Landlord submitted that it was the Tenant's choice to put the dog into boarding and that the Tenant was now seeking to claim this cost back from the Landlord when he did not have to incur that loss.

The Tenant acknowledged that the Landlord's motel did allow pets but stated that he was verbally told by the Landlord that he could not bring his dog there. The Tenant confirmed that he did not make a request from the Landlord in writing to have the dog at the motel and did not have anything in writing that restricted the dog's access to the motel room.

With respect to the Tenant's monetary claim for 3.5 month's rent, the Landlord submitted that the Tenant agreed to voluntarily move out while he undertook the work to the rental unit and made no issue of this until he filed the Application. The Landlord confirmed that the Tenant was paying rent for February 16, 2017 to the end of April 2017 but he was being provided equitable accommodation in a motel room where the Landlord was paying the difference for a motel room charged at \$69.00 per night. The Landlord rejected the Tenant's monetary claim stating that the Tenant had not experienced any loss even though he had to move to the motel room during a period of

time. However, the Landlord offered the Tenant \$200.00 in monetary compensation to settle this portion of his claim.

The Tenant carefully considered the Landlord's offer and decided to accept it in the alternative to me making a decision on this portion of the Tenant's monetary claim.

With respect to the return of the Tenant's personal property, the Landlord stated that the Tenant had been given a contact number for his family members but the Tenant had not made any concrete arrangements to collect all of his belongings. In this respect, the parties agreed that the Tenant will attend the residential property on May 27, 2017 between 9:00 a.m. and 4:00 p.m. and during these hours remove all of his personal property currently being stored in the garage. The Tenant is to also remove the dresser from the rental unit and his vehicle on the property. The Tenant must ensure that he allows enough time and resources to remove this property during this one event.

Analysis

With respect to the Tenant's Application for the return of his personal property, I make the following findings. The Tenant will attend the rental property on May 27, 2017 and collect his personal property pursuant to the terms above. The Landlord or an agent of the Landlord needs to ensure that the Tenant has access to the rental property during the hours of 9:00 a.m. to 4:00 p.m. If the Tenant leaves any property behind after 4:00 p.m. the Landlord may consider these to be abandoned by the Tenant pursuant to the Residential Tenancy Regulations.

If the Landlord fails to provide access to the Tenant or impedes the recovery of the Tenant's personal property, the Tenant is at liberty to file an Application for monetary compensation; the Tenant will bear the burden to prove such a claim.

With respect to the Tenant's monetary claim for 3.5 months' rent, the parties agreed that the Landlord will pay the Tenant \$200.00 in monetary compensation and that this money will be provided to the Tenant on May 27, 2017. The Landlord should retain documentary evidence of payment made. The Tenant is issued with a Monetary Order for this amount which is enforceable in the Small Claims Division of the Provincial Court as an order of that court. Copies of this order are attached to a copy of this Decision.

With respect to the Tenant's claim for dog boarding costs, I find that the Tenant has failed to meet the burden to prove this relief sought. This is because, the Tenant provided no supporting or corroborating evidence that the Tenant's dog was restricted access to the motel room the Tenant was staying at when the work to the rental unit

was being undertaken. In this respect, the Tenant relies only on his oral testimony which I find in this case results in one party's word against the others. I find the Tenant's evidence is no more compelling than the Landlord's evidence.

In addition, the fact that the parties' acknowledged that the Landlord's motel does not restrict pets, gives me no reason to believe that the Landlord restricted access to the Tenant's dog. Section 7(2) of the Act makes mitigation a critical component to a claim of damages for breaches of the Act. In this respect, I am not satisfied that the Tenant mitigated his loss by putting his dog in a boarding kennel. Therefore, I dismiss this portion of the Tenant's monetary claim with leave to re-apply.

Conclusion

The Tenant's monetary claim for dog boarding is dismissed without leave to re-apply. The Tenant's monetary claim for a rent rebate was settled by the Landlord's offer of \$200.00. The Landlord is ordered to return the Tenant's personal property on May 27, 2017 by allowing the Tenant to recover it from the rental property. The remaining issues on the Tenant's Application are dismissed without leave to re-apply.

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: May 24, 2017

Residential Tenancy Branch