



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDC

Introduction

This hearing dealt with a tenant's application for return of personal property and monetary compensation for damages or loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenant testified that he sent the hearing documents to the landlord via registered mail on May 8, 2017. I noted that the landlord had provided a response to the Residential Tenancy Branch and the tenant confirmed that he also received the landlord's response. Accordingly, I was satisfied the landlord was served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

As for the landlord's written submission, the tenant indicated that he had reviewed it but that he disagreed with many of the landlord's submissions. Rule 7.4 of the Rules of Procedure which provides that: "If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered." Many of the pages submitted by the respondent indicate the tenant over-valued many of the items for which he seeks compensation or the items were not in the rental unit. I have considered the respondent's evidence since the tenant was provided the opportunity to respond to it.

As to the tenant's request for return of personal property, the tenant did not make any submissions in his oral testimony that the landlord is still in possession of the tenant's property. The landlord appears to indicate he no longer has any property belonging to the tenant in his written submission. Accordingly, I make no order for return of the tenant's personal property.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for disposal of his personal property, as claimed?

Background and Evidence

The tenancy started on August 1, 2014 with a former landlord. The tenant was required to pay monthly rent of \$800.00 on the first day of every month. The tenant paid a security deposit of \$400.00.

The tenant acknowledged that the last time he paid rent was for the month of December 2016 and he continued to occupy the rental unit in the months of January 2017, February 2017 and March 2017.

The tenant submits that he did not vacate the rental unit despite failure to pay rent because he was trying to find a job and did not have the resources to move to another rental unit. The tenant claimed the former property manager was aware of the situation and permitted him to continue to occupy the rental unit through March 2017 since the rental unit had not been re-rented.

The tenant testified that in the month of March 2017 he was coming and going from the rental unit, often taking some of his smaller possessions out of the unit and moving them to his mother's home. On March 27, 2017 the tenant found the locks to the rental unit were changed. The tenant contacted the owner of the property who advised the tenant there was a new property manager. The tenant called the new property manager on April 1, 2017 and was told that some of the tenant's possessions were thrown out because they were unsanitary. On April 7, 2017 the tenant met the property manager at the rental unit and retrieved his television and furniture.

The tenant seeks compensation totalling \$13,325.00 from the property manager. The tenant provided a listing of 25 items the tenant claims were disposed of by the property manager and a corresponding value next to each item. The tenant testified that the values he ascribed to each item are the cost of the item when it was new or the replacement cost.

The landlord had provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 19, 2017 with a stated vacancy date of January 31, 2017. The property manager submitted that on March 17, 2017 he and the owner determined the property had been abandoned by the tenant after learning from the neighbour that the tenant had not been seen at the property for 6 – 7 weeks and the tenant's uncollected mail had been accumulating at the property. Upon entry into the rental unit the kitchen cabinets and drawers were essentially empty, the bed did not look as though it had been slept in since it was covered in clutter, linen and clothing were laying on the floor, among other

things. The property manager took pictures and provided them as evidence showing the items left in the rental unit. The property manager acknowledged that the locks were changed on March 20, 2017 and efforts to clean up the property commenced April 1, 2017. The property manager acknowledged disposing of items considered unsanitary, such as the bedding and clothing lying on the floor. The landlord set aside items considered of value, such as the television and returned it to the tenant. The landlord submitted that it was not until April 11, 2017 that the tenant contacted the landlord about his possessions and the tenant returned to the property on April 20, 2017 to retrieve his possessions. The landlord submitted that some of the items on the tenant's listing were not in the rental unit. However, the landlord also provided a number of print-outs from the internet showing the value of many items appearing on the tenant's list in an effort to demonstrate the values submitted by the tenant were exaggerated.

The tenant was of the position the property manager did not have the right to enter the rental unit or change the locks in March 2017 since his management role did not commence until April 1, 2017.

The tenant testified that he had not abandoned the rental unit.

The tenant also disputed the values the landlord put forth as evidence, claiming the items that were disposed of were worth more than that appearing in the landlords' evidence. The tenant was also of the position that the bedding was not unsanitary.

The tenant did not produce any documentary evidence for this proceeding.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities or preponderance of evidence. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, it was unopposed that the tenant failed to pay rent when due for January 2017 onwards. It would also appear that the tenancy came to an end pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent effective January 31, 2017 yet the tenant remained in possession of the rental unit for a considerable period of time after that.

Where a tenancy has ended and the tenant does not vacate the rental unit, the landlord must obtain an Order of Possession, followed by a Writ of Possession from the Supreme Court if necessary, to regain possession of the rental unit. However, if a tenant has vacated or abandoned the rental unit an Order of Possession and Writ of Possession are not required and the landlord automatically regains possession upon the tenant vacating or abandoning the rental unit.

Where a tenant abandons a rental unit and leaves possessions behind, the Residential Tenancy Regulations provides rules with respect to the handling of the abandoned property. Generally, the landlord is permitted to remove the property from the rental unit but is required to take an inventory of the property and store the possessions for a certain period of time. However, there are some exemptions to this requirement, such as where: the property has a cumulative value of less than \$500.00; it would be unsanitary or unsafe to store the property; or the cost to move and store the property is greater than the estimated proceeds of sale of the property.

I was provided opposing positions with respect to whether the tenant abandoned the rental unit and the presence of certain items being left in the rental unit. While the landlord may have violated the Act and Regulations with respect to taking possession of the rental unit and disposing of the tenant's possessions, the landlord challenged the values put forth by the tenant with documentary evidence, the internet print-outs, and the tenant did not submit any corroborating evidence to establish the value of his possessions he alleges are missing due to the landlord's alleged breach.

As seen in the test for damages outlined above, an applicant bears the burden to establish the value of the loss claimed. Where a party claims to have suffered a loss of personal property due to the actions of the other party and the applicant seeks to recover the value of such items from the other party, I find it reasonable to expect the applicant would provide some form of corroborating evidence to establish the value of the item. Corroborating evidence would include receipts, invoices, print-outs or photographs or price lists of similar items for sale at a store or on-line.

Considering the landlord opposed the values put forth by the tenant and the tenant's lack of corroborating evidence, I find the tenant failed to provide sufficient proof as to the value of his losses and I dismiss his claim.

Conclusion

The tenant's claim for compensation against the landlord has been dismissed due to insufficient evidence.

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: June 23, 2017

Residential Tenancy Branch