



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC RPP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on April 10, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- an order for the Landlord to return his personal property.

The Tenant and the Landlord both attended the hearing and provided testimony. The Landlord also had his counsel present. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to an order for the Landlord to return his personal property?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this Decision, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Tenant stated that he is claiming for \$100.00 per day for emergency housing due to his wrongful eviction at the end of January 2018. He is also seeking \$5,000.00 for the damage caused to his belongings, \$5,000.00 for emotional distress, plus \$2,950.00 for moving related expenses and rent for his new residence. In total, the Tenant stated that he is seeking \$15,000.00 in compensation for the illegal actions of the Landlord.

The Tenant stated that, at the end of January 2018, the Landlord changed the locks and moved his belongings out of the rental unit while he was out. The Tenant stated that he came back to the rental unit after a night away to find all of his belongings on the patio, and the locks to the rental unit were changed. The Tenant stated that it had rained overnight and some of his things were wet and damaged. The Tenant stated that the Landlord packed all of his things up and put them in garbage bags. The Tenant stated that some of his things such as his couch and his TV were ruined from the moisture.

The Tenant stated that he is also asking for the Landlord to return his personal property. However, he also stated that he is not sure what is missing, as he did not itemize his things such that he would be able to determine what the Landlord may have taken. The Landlord stated that he did not take any of the Tenant's belongings.

The Tenant stated that he acknowledges that he was behind in rent, and that he had a series of text message conversations with the Landlord on this issue. The Tenant stated that after not being able to secure any other place to move to, and after losing this rental unit he moved most of his belongings to his brother's garage, and stayed with him for a period of time.

The Landlord stated that the Tenant was behind in rent, and had not paid his security deposit, as of the beginning of January 2018. The Landlord stated that he issued a Notice to End Tenancy for non-payment of rent, and engaged in dialogue with the Tenant to end the tenancy around January 10, 2018. The Landlord provided documentary evidence (screenshots) of text message conversations he had with the Tenant regarding unpaid rent, and the end of the Tenancy. More specifically, the Landlord referred to the text messages he and the Tenant exchanged regarding the mutual agreement to end the tenancy. The text messages set out that on January 10, 2018, the Tenant stated that he would be moving out at the end of the month. The Tenant also stated that he would have the place clean and ready for the next renters.

The Landlord responded by text on January 11, 2018, stating that he did not want any issues, and to please move out by January 30, 2018. The Tenant then responded the same day saying "sounds good". The Landlord stated that he relied on this mutual agreement that the tenancy would end on January 30, 2018, so when the Tenant texted him again on January 30, 2018, it was too late to reinstate the tenancy. In the Tenant's text message on January 30, 2018, he stated that he did not want to move out and that the Landlord should take the necessary steps required to evict him.

The Tenant stated that he was having a difficult time finding another place to rent after he agreed to move.

The Landlord stated that, as per their mutual agreement, the tenancy was over on January 30, 2018, which is when he went down to the Tenant's unit and changed the locks. The Landlord stated that the Tenant had packed all of his belongings up and put them at the entrance to the suite where it was covered by the deck and roof above. The Landlord stated that when he went down to the rental unit to check on how the Tenant's move was going, he knocked on the door and no one answered. The Landlord stated that he let himself into the unit, and saw that it was largely emptied out, except for two black garbage bags, which he then moved outside with the rest of the Tenant's items. The Landlord stated that these are the only things he moved outside, and that the Tenant had already moved all of his things under the covered back porch, prior to him attending the unit.

The Landlord stated that he changed the locks and the Tenant has not been back into the unit since then. The Landlord stated that it appeared the Tenant had already left the rental unit, as most of his things were already moved outside, except for the last two garbage bags.

The Landlord stated that the Tenant's story is completely untrue, as it was the Tenant who moved all of his belongings into the covered porch area, then changed his mind when he was unable to secure a new place to live as he had planned. In contrast to this, the Tenant stated that he did not move any of his belongings out of the rental unit and he believes it was the Landlord trying to get him out, without having to utilize the proper legal channels.

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. Awards for compensation are provided in sections 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 instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

In this case, the Landlord and the Tenant have provided significantly differing versions of events. The parties disagree on who moved the Tenant's belongings out of the rental unit. The Tenant stated that someone moved his belongings out while he was gone from the unit, and changed the locks. The Landlord has stated that this is simply untrue, and that the Tenant moved his own belongings out and is now blaming him because he was unable to secure another place to move to, after agreeing to leave.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the Tenant has failed to provide sufficient evidence to show that the Landlord moved his belongings out of the rental unit and damaged the items as alleged. As such, I dismiss the Tenant's application on this point, and I decline to award the Tenant compensation for any damaged items.

Next, I turn to the remainder of the Tenant's request for compensation (for emergency shelter, moving costs, rent for new place, and emotional distress). I have considered the circumstances leading up to the end of the tenancy. It appears the Tenant was having financial issues (unpaid rent and security deposit) and both parties engaged in dialogue about the Tenant moving out at the end of January 2018.

The text messages provided into evidence show that the Tenant agreed to move out by January 30, 2018. I find there is sufficient evidence that the parties mutually agreed to end the tenancy, effective January 30, 2018, via text message. Although the Tenant sent a text message on January 30, 2018, saying he was no longer going to move out voluntarily, I find he was not in a position to extend his tenancy any further, given that he had already agreed to vacate. Furthermore, a party may not unilaterally withdraw a notice to end a tenancy without the agreement of the other party. As both parties agreed to terminate the tenancy, effective January 30, 2018, I find the Tenant is not entitled to compensation for emergency shelter, moving costs, future rent for his new place, and emotional distress.

Also, the Tenant has requested the return on his personal belongings as part of this application. However, he also stated that he is not sure what is missing, and could not provide any account of what he no longer has, or that the Landlord took it. The Landlord denies taking any items as alleged. After considering the totality of this issue, I dismiss the Tenant's claim to have the Landlord return his personal property, as I find there is insufficient evidence that the Landlord took, or has any of his property.

Since the Tenant was not successful with his application, I decline to award him recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, 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: April 12, 2018

Residential Tenancy Branch