



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 2, 2018 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant attended the hearing. The Landlord attended the hearing with the Property Manager. I explained the hearing process to the parties who did not have questions about the process when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed she received the hearing package and Tenant’s evidence. The Tenant said he did not receive the Landlord’s evidence.

The Landlord had submitted a copy of a decision from a prior arbitration between the parties. The file number for this is noted on the front page of this decision. This is admissible regardless of service as both parties were present at the prior hearing and the Tenant would have been aware of the decision.

The Landlord had submitted two further pages of evidence. The Landlord confirmed these were not served on the Tenant. I excluded these pages as they were not served on the Tenant in accordance with rule 3.15 of the Rules of Procedure (the “Rules”). I find it would be unfair to the Tenant to admit evidence he was not aware of and had not received.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a verbal tenancy agreement between the two in relation to the rental unit. The tenancy started in April of 2015 and was a month-to-month tenancy.

I note the decision from the prior hearing touches on jurisdiction which I will not repeat or address here. I also note the arbitrator found the rental unit had been sold as of March 4, 2016 and therefore the Landlord was no longer the landlord. The subject matter of the Application arose prior to March 4, 2016 and therefore I found it appropriate to proceed with the named parties.

The Tenant sought \$12,191.46 in compensation for cell phones and laptops that went missing from a shed on the property of the rental unit.

The Tenant testified as follows. He refurbishes cell phones and laptops. He put cell phones and laptops in a shed on the property of the rental unit. The Landlord had the key to the shed. On December 28th, the Landlord called the Tenant stating the door to the shed had been removed and asking him about this. When the Tenant returned to the property, the Landlord was not there. It was dark. The Tenant could tell someone had searched through his belongings but could not tell what had been taken. He called the police who attended. The following day, he realised his cell phones and laptops were missing. Only his belongings had been taken from the shed.

The Tenant said he believed the Landlord removed the shed door and took his belongings based on the following. There was no damage done to the door of the shed. The door would have been damaged if someone had broken into the shed. The

Landlord did not call the police. The Landlord had a motive to steal the belongings and nobody else did. Nobody else knew his personal belongings were stored in the shed. Nobody had broken into the shed since. He said he believed the Landlord used her key to open the door, removed it from its hinges, hid the door and took his cell phones and laptops.

The Tenant submitted screen shots of the price of similar cell phones and laptops from a website that re-sells these items. This is the basis for the amount claimed. He said the amount claimed represents his potential profit if he had been able to sell the items.

The Tenant testified that he told the police items were missing but that he did not know what items. The Tenant provided a list of missing items to me. I asked if he had reported these items stolen to the police and he said he had not.

The Property Manager spoke for the Landlord. He said the Landlord disputes the claims. He said the Landlord did not remove the shed door or steal the Tenant's belongings. He said the Landlord disputes that the items claimed were in the shed.

The Property Manager submitted that the Tenant is making a lot of assumptions. The Property Manager questioned why the Tenant would leave over \$10,000 worth of cell phones and laptops in a shed. The Property Manager pointed out that the Tenant should have an inventory of items and serial numbers that could be provided to police to track the missing items.

In his written material, the Tenant states that the Landlord is the one who forced him to move his belongings into the shed the day before the items went missing.

Analysis

Section 7(1) of the *Residential Tenancy Act* (the "*Act*") states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results.

Section 67 of the *Act* states that "...if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party".

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Rules states that it is the party making the claim that has the onus to prove it.

The Tenant, as applicant, has the onus to prove he is entitled to the compensation claimed. I am not satisfied the Tenant is entitled to the compensation claimed for two reasons. First, the Tenant provided insufficient evidence that the Landlord removed the shed door or took cell phones and laptops belonging to him. Second, the Tenant provided insufficient evidence that he in fact had the cell phones and laptops claimed stored in the shed.

The Tenant submitted it was the Landlord who removed the shed door and took his belongings. The Landlord disputed this. I do not find the circumstances described by the Tenant lead to the conclusion it was likely the Landlord who removed the shed door and took his belongings. I find it just as likely that a third party did this. The Tenant provided insufficient evidence to support his position that it is the Landlord who is at fault. I cannot find that the Landlord breached the *Act, Regulations* or tenancy agreement in the circumstances.

Further, the Tenant did not provide sufficient evidence that he in fact stored cell phones and laptops in the shed as claimed. The Tenant did not provide any police report as evidence. The Tenant said he never told the police what was stolen. One would think the Tenant would provide the police with the same list he provided me once he realised what had been taken. In any event, the Tenant provided no evidence to support that

these items were in the shed or stolen and the Landlord disputed that these items were in the shed.

In the circumstances, I cannot find that the Tenant is entitled to the compensation he seeks. Further, I decline to award the Tenant reimbursement for the filing fee as he was not successful in this application.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is 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: October 16, 2018

Residential Tenancy Branch