



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On July 3, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. In addition, L.H. attended the hearing and advised that he was not the Landlord but an agent for the actual Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package and evidence to the Landlord by registered mail on July 7, 2018; however, he did not know the tracking number for this package. The Landlord stated that he did not receive this package and only heard about the hearing via an email reminder from the Residential Tenancy Branch; however, he was prepared to respond to the Application. As such, I determined that it was appropriate to continue the hearing. Although, the Tenant’s evidence was excluded as I was not satisfied that it was served on the Landlord. The Tenant was allowed to provide testimony with respect to his evidence during the hearing.

The Landlord advised that he served his evidence to the Tenant by registered mail on November 7, 2018. The Tenant confirmed that he received this, that he was prepared to respond to the evidence, and that he did not need to watch the digital evidence that was submitted. As the Tenant was prepared to respond to the evidence, I have accepted this evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy originally started years ago, between the Tenant and his father. His father sold the rental unit to the new owner in February 2018. He advised that the Tenant did not pay the new Landlord any rent and then vacated the rental unit on June 30, 2018. He stated that the Tenant had previously paid rent in the amount of \$1,000.00 per month and that it was due on the first day of each month. He does not know if a security deposit was paid.

The Tenant advised that he had lived in the rental unit for over 20 years. He stated that he met with the new Landlord and could not come to an agreement on how much rent should be, so he never paid any rent.

The Tenant stated that he gave his notice to end his tenancy and advised the Landlord that he would vacate by June 31, 2018; however, this date does not exist. He stated that he returned to the rental unit on July 1, 2018 and the Landlord had disposed of some of his personal belongings.

The Landlord advised that the Tenant was required to be out of the rental unit by 11:00 AM on June 30, 2018. He stated that the door of the rental unit had been left open overnight, that the keys were left on the bookshelf, and that he had two other people accompany him into the rental unit while he filmed his entry on July 1, 2018 at 11:00 AM. He stated that the Tenant left some plants that were near death, that the bookshelf left was broken, that there were pieces of furniture that were old, dirty, and in poor condition, and that there were no items of clothing left, except for a towel. Based on this, he made the determination that the rental unit was abandoned. He advised that his estimate of the total market value of the property left behind was under \$300.00.

The Tenant advised that he was seeking compensation in the amount of **\$600.00** for drapes that he left behind that were subsequently disposed of. He advised that this was the value of the drapes when he purchased them with his ex-wife in 2013. He did not provide any documentary evidence to corroborate the value of these drapes at the time of purchase or to substantiate their current value.

The Landlord advised that there was one small set of drapes that was left behind, and he did dispose of them.

The Tenant advised that he was seeking compensation in the amount of **\$800.00** for the cost to replace two bicycles that he left behind and were subsequently disposed of. He stated that these bicycles were gifted to him by his father and they were in good condition. He submitted that the only evidence he has to substantiate this value is from his father who had told him in 2015 that they were worth \$400.00 each.

The Landlord referenced a letter from the Tenant's father that stated that the bicycles were 18 years old, that they were loaned to the Tenant, that they are of minimal value, and that he could do whatever he determined was appropriate to deal with them. He stated that he left them in a covered donation area of the Salvation Army.

The Tenant submitted that he was seeking compensation in the amount of **\$220.00** for a five-gallon bucket of paint that he purchased in January or February 2018 that was left in the rental unit and disposed of by the Landlord.

The Landlord stated that he does not remember there being paint left in the rental unit and he does not recall seeing the paint in the video he submitted into evidence.

The Tenant stated that he left the paint in the storage locker and the Landlord advised that it may still be in there as he had not looked in the locker. The Landlord also advised that the Tenant had left the key to the locker behind.

The Tenant submitted that he was seeking compensation in the amount of **\$70.00** for the cost of a dresser that he left behind. He stated that he had no proof of the value of the dresser but that he had owned it for a long time and it had sentimental value to him. The Landlord stated that he had seen this type of dresser in some of the other units in the building and that they were purchased over ten years ago. He advised that he disposed of this dresser as it was damaged due to water and that the drawer was broken.

The Tenant was also seeking compensation in the amount of **\$100.00** for a computer desk that he had left.

The Landlord submitted that this item was an entertainment desk for a TV, not a computer desk, and that it can be seen in the video.

Finally, the Tenant was seeking compensation in the amount of **\$160.00** for two kitchen chairs that he had left behind. He advised that his father purchased them as a gift in 2016.

The Landlord stated that these items were part of the furnished unit and the owner of the rental unit advised him to dispose of them.

Analysis

Upon consideration of the evidence before me, my reasons for making this decision are below.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

In addition, I find it important to note that Sections 24 and 25 of the Residential Tenancy Regulations sets out the requirements with respect to abandonment of personal property.

When reviewing the totality of the evidence, I am satisfied that it appeared as if the the Tenant had removed substantially all of his personal property prior to the Landlord entering the rental unit on July 1, 2018. Moreover, while it was the Tenant's belief that he had until July 1, 2018 to move, I find it reasonable that the end of tenancy would fall on the last day of the month. As such, I am satisfied that it was realistic to conclude that the Tenant could not reasonably be expected to have returned to the residential property and that this property was appropriately considered abandoned.

Furthermore, when determining how to handle abandoned property, the Regulations state that the Landlord is entitled to dispose of the property in a commercially reasonable manner if he reasonably believes that the property has a total market value of less than \$500.00.

With respect to the Tenant's claims for compensation, I find that the Tenant has not provided compelling evidence to support the estimated value that he placed on the property that was disposed of. Based on the video evidence and the documentary evidence submitted, I find the Tenant's estimate of his property to exceed a realistic value of these items. As such, I am not satisfied that the Tenant has substantiated his claims for compensation.

Furthermore, when reviewing the evidence, I am satisfied that a conservative estimate of this property to be valued at well under \$500.00. Consequently, I find that the Landlord was entitled to dispose of this property in a commercially reasonable manner in compliance with the Regulations.

As the Tenant was unsuccessful in his claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Based on my findings above, I dismiss the Tenant's Application in its entirety.

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: December 5, 2018

Residential Tenancy Branch