



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, RPP*

Introduction

This hearing dealt with the tenant's application, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for the "*loss of personal property family heirlooms personal belongings by friends who have passed on*"

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged that neither of them had filed any documents into evidence.

Issues to be decided

Is the tenant entitled to compensation?

Background and Evidence

The hearing by conference call started at 1:30pm on January 29, 2018. The tenant joined the conference call in a timely manner, but the landlord did not. Since this hearing was convened to address the tenant's application, the hearing proceeded in the absence of the landlord. The tenant was unable to provide accurate information on the service of the hearing package on the landlord. I gave the tenant the benefit of the doubt because I found that the landlord had called the Residential Tenancy Branch Office to get information on the hearing scheduled for this date.

The tenant appeared to be unsure of dates related to the tenancy. He stated that to the best of his recollection, the tenancy started in March 2018 and ended when he was evicted by the bailiff on December 20, 2018. The tenant testified that the bailiff took all his personal belongings and instead of storing them for 90 days, the landlord destroyed all his possessions. The tenant described his lost items as "*family heirlooms and personal belongings by friends who have passed on*"

The tenant did not have a list, photographs or any description of the items he claimed were destroyed by the landlord that he could rely on, to support his claim of \$35,000.00.

15 minutes into the hearing the landlord joined the conference call. The landlord testified that the tenant was evicted in January 2018 that she stored his belongings in her yard and he removed some of them. The landlord stated that she had to dispose of 4 mattresses at her cost and that the items left behind attracted rodents. In March 2018, the landlord disposed of the remainder of items left behind. The landlord described the tenant's belongings that were left behind as items of little to no value.

Despite having testified that he was moved out by the bailiff in December 2018, the tenant agreed with the landlord that the eviction had taken place in January 2018 and that he had removed 15 boxes of his belongings. He stated that he had left behind art work which was destroyed when he returned to pick it up.

Analysis

Where a tenant is making a monetary claim for damages the tenant has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the person suffering the loss must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being stored in a yard must remove these possessions as soon as practicable in order to avoid damage and loss. Failure to take the appropriate steps to minimize the loss will affect a monetary claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

Based on the sworn testimony of both parties, I find that the tenant was evicted by a bailiff in January 2018 and that his belongings were stored in the landlord's yard. The tenant retrieved 15 boxes of his items. The landlord stated that she waited till March 2018 and then disposed of the remainder of the items because they appeared to be of little value and posed a threat of a rodent infestation.

The tenant did not file documents to support his monetary claim and his verbal testimony consisted of multiple inaccuracies with regard to dates and items that were allegedly lost. After the landlord joined the hearing the tenant contradicted his own statements made earlier during the hearing.

Residential Tenancy Regulation section 25 describes a landlord's obligations regarding disposing of a tenant's property. Section 25(2) states that the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that:

- (a) The property has a total market value of less than \$500
- (b) The cost of removing, storing and selling the property would be more than the proceeds of its sale or
- (c) The storage of the property would be unsanitary or unsafe

Base on the above, I find on a balance of probabilities that is more likely than not that that when the tenant retrieved 15 boxes containing his belongings he would have taken all the items of value. It is unlikely that the tenant would have left behind valuable art work to be stored in the landlord's yard. In addition, the landlord stated that the items left behind were of little to no value and storing of these items beyond March 2018 was unsanitary and unsafe.

After considering all the testimony of both parties, I find that the tenant has failed to prove his case and accordingly his claim for \$35,000.00 is dismissed.

Conclusion

The tenant's application is dismissed 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: January 29, 2019

Residential Tenancy Branch