



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for a monetary order for damages or compensation pursuant to section 67.

Both the landlord and the tenant appeared for the scheduled hearing. As both parties were in attendance, service of documents was confirmed. The tenant denies receiving the landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution but denies receiving the tenant's evidence. I find the landlord was served with the application in accordance with section 89 of the Act.

Preliminary Issue

The tenant submitted 89 pages of evidence to the Residential Tenancy Branch on May 14, 2019 which the landlord denies receiving. Rule 3 provides comprehensive rules for service and exchange of evidence. The applicant's evidence must be received by the Branch and the other party within 14 days of the hearing. If a party does not comply with the time lines included in Rule 3, that party risks the evidence not being considered. I considered whether the acceptance of the late evidence would prejudice either party or result in a breach of the principals of natural justice and the right to a fair hearing. I determined that if I were to accept the tenant's late evidence, the landlord would be denied the opportunity to prepare for and submit their case and rebuttal to it. This would be prejudicial against the landlord and ruled the tenant's late evidence would not be considered.

The landlord uploaded evidence on May 16, 2019 which the tenant denies receiving. The respondent's evidence must be received by the applicant and the Branch not less than seven days before the hearing. I determined the landlord has also not complied with Rule 3 and likewise ruled the documents inadmissible for consideration.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

The tenant did not call his witness but gave the following testimony. He attended a hearing before an arbitrator of the Residential Tenancy Branch and was served with an Order of Possession the night of December 18, 2018.

On December 19th, the tenant started arranging for storage of his belongings and hired movers for December 22nd. On December 22nd, the tenant took his larger items, such as a couch, reclining chair, coffee table, BBQ, and dresser, however he left behind valuable artwork, audio gear, and kitchen items. On the 22nd he advised the landlord that two thirds of his stuff was still there and he would be back the following week to retrieve it.

When he went back to retrieve items, he was confronted by a guest of the landlord's who denied him access to the rental unit. An altercation occurred, leading to the tenant's arrest and charges which are now pending against him. The tenant asked the police if they could put some of his items in his vehicle to avoid damage caused by the rain. The tenant testified the landlord had left his items outside, which the landlord denies. After the arrest, the tenant went back to retrieve items but discovered them destroyed by rain or stolen. The tenant testified the police had caused damage to both his vehicle and his personal items when they put them into the car. He further testified that his bed had become destroyed by vermin during the tenancy and he had to leave it behind. His collection of artwork was either destroyed by rain or went missing after December 22nd. The same fate happened to his kitchen gear and audio gear. A fob to his car was left in the drawer of the rental unit which the tenant did not retrieve. The tenant withdrew his claim for food to keep his monetary claim below the statutory limit of the legislation. The tenant provided a monetary order worksheet in his application.

	Item	Amount
1	Kitchen	\$5,200.75
2	Electronic	\$17,600.00
3	Bed	\$2,624.00
4	Food-(claim withdrawn)	\$20,000.00
5	Art	\$5,300.00
6	Re-key Car	\$500.00

7	ICBC Deduct	\$300.00
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The landlord provided the following testimony. On December 22nd, the tenant was at the rental unit with a 5 ton truck and his car removing his personal belongings. He gave the landlord the key to the rental unit at around 12:30 p.m., leaving 8 or 9 bags in the driveway, contents unknown.

As the tenancy had ended by way of the order of possession and the keys were returned, the landlord changed the locks to the rental unit immediately. The tenant returned at around 3:00 p.m., broke into the rental unit, vandalized the property and assaulted the landlords or their guests later that day when he returned.

The tenant's previous application before the Residential Tenancy Branch erroneously showed the wrong address for the rental unit and the landlord was advised by the Supreme Court that the address on the Order of Possession had to be corrected before a Writ of Possession could be issued. The landlord received the corrected Order of Possession by email on December 24th. They did not subsequently file for the Writ of Possession as the tenant had vacated the rental unit on December 22nd.

Analysis

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In the case before me, the tenant has failed to prove to me the landlord has caused him to suffer the losses as claimed on a balance of probabilities. The tenant testified he moved his sofa, coffee table, reclining chair and BBQ and yet he left his most valuable possessions behind. I find it improbable that the tenant would take such care to pack up and move these less valuable items while leaving his stereo equipment and speakers worth over \$17,000.00 behind to be retrieved a week later. Likewise, he

claims his artwork and kitchen items, together worth in excess of \$10,000.00 were not important enough to make it on the moving truck. I find the tenant, by his actions, has failed to mitigate his losses by leaving his most valuable possessions behind after the tenancy ended.

The tenant's actions are especially troubling considering he chose to leave all this behind knowing he was subject to an order of possession requiring him to provide **vacant** possession and occupation of the rental unit to the landlord not later than two (2) days after being served with the order.

Second, the tenant did not have any proof that he was in possession of any of the items claimed. The tenant did not provide photographs of the kitchen items or photographs of even being in the same room as the stereo equipment he seeks replacement of. Nor are there any photographs of the artwork the tenant claims he lost or were destroyed by rain. Furthermore, after the incidents of December 22nd, the tenant never took any photographs to show they his items were left out in the rain. The tenant has failed to prove he owned any of items sought in his monetary order worksheet and has therefore failed to show the damage or loss exists. The tenant's claim for the kitchen items, the electronics and the art (items 1, 2 and 5) are dismissed.

The tenant testified he left the bed behind as it was unsalvageable due to vermin infestation. If there was a problem with vermin during the tenancy, the tenant had the opportunity to file for dispute resolution for this issue and did not. The tenant has not shown how the damages he is seeking resulted from a violation of the Act, regulations or tenancy agreement by the landlord. The claim for bed replacement (item 3) is dismissed.

The tenant testified the police caused the damage to his vehicle the night of December 22nd. The landlord can only be held liable for damages caused by the landlord's violation of the legislation, not the actions of another person. The claim for the ICBC deductible (item 7) is dismissed.

The tenant claims the key fob was left behind (item 6). The testimony of the parties shows the tenant gave the keys to rental unit to the landlord willingly on December 22nd. The tenant had every opportunity to take the key fob when he left but did not do so. The landlord cannot be held responsible for this item left behind after the tenancy ended by means of an order of possession and I dismiss this claim.

Conclusion

The tenant's application is dismissed.

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: May 28, 2019

Residential Tenancy Branch