Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD RPP

Introduction

In this rather unusual dispute, the tenant seeks the following relief under the *Residential Tenancy Act* (the "Act"):

1. compensation for the loss of personal property, under section 67 of the Act;
2. compensation for the return of his security deposit, under section 38 of the Act; and,
3. return of his personal property, under section 65 of the Act.

The tenant applied for dispute resolution on April 10, 2019 and a dispute resolution hearing was held on June 17, 2019. The tenant and one of the "landlords" attended the hearing. The tenant also had with him his daughter to assist. The "landlord" R.T. was present with another individual who refused to identify himself.

The tenant testified that he "probably" served the Notice of Dispute Resolution Proceeding on the landlord M.J. shortly after he filed for dispute resolution. However, he also testified (before I asked him a leading question on the issue of service) that he "can't remember" and was "not sure" what or how he served the landlord M.J. There was no copy of any Proof of Service document to substantiate the tenant's testimony regarding service. Based on the uncertainty of the tenant's testimony and the absence of the landlord M.J., I am not satisfied on the evidence that the landlord M.J. was served the Notice of Dispute Resolution package as required by section 89 of the Act.

I reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, but have only considered evidence relevant to the preliminary issues of this application.

Preliminary Issue: Tenant's Application for Security Deposit

The tenant testified that, despite what the landlord R.T. explains below, he (1) never gave the landlord M.J. notice to end the tenancy, (2) considers himself a tenant of the landlord, and (3) never provided his forwarding address to the landlord M.J. He never provided his forwarding address because he still considered, and considers, himself a tenant and therefore would not have had such an address.

The tenant further testified that he lived in the rental unit for 19 years. He paid monthly rent of $650.00 and gave the landlord M.J. a security deposit of $250.00. At the end of September 2018, he sublet the rental unit to his friend (the landlord R.T.) and the friend only paid partial rent. The tenant attempted to evict R.T. by serving him with a Two Month Notice to End Tenancy for Landlord's Use of Property but this proved unsuccessful. No copy of the Two Month Notice for Landlord's Use of Property was submitted into evidence, nor was any copy of a sublet tenancy agreement. Ultimately, R.T. changed the locks and started paying rent directly to the landlord M.J.

R.T. testified that he was in the rental unit for "several months" before September 2018 to help the tenant out. In September 2018, the tenant had to leave town in order to help out his dying mother, so R.T. was allowed to keep living there. The tenant told R.T. to "make it like it's your home." R.T. testified that he never received any eviction notice. He started paying the full rent sometime in the Fall and switched the BC Hydro account over into his name.

R.T. further testified that he returned the tenant's property to a trailer, and that the tenant otherwise abandoned everything that was in the rental unit.

What is missing in evidence, either documentary or oral, is anything that proves that the tenant's tenancy with the landlord M.J. ever ended. In other words, the tenancy between the tenant and the landlord M.J. is in existence. And, despite that R.T. started paying rent directly to the landlord, and changing the rental unit's locks, does not by those actions ends the tenant's tenancy with M.J. I find that, to put it simply, R.T. simply locked the tenant out of his own home.

Given that I find there exists a tenancy between the tenant and the landlord M.J., the tenant has no claim against landlord M.J. for the return of his security deposit, as such a claim may only arise once a tenancy has actually ended, pursuant to section 38 of the Act. For this reason, I dismiss the tenant's claim for the return of his security deposit with leave to reapply (once the tenancy ends).

Preliminary Issue: Compensation and Return of Personal Property

What is also missing in evidence is any proof that the tenant issued a notice to end the tenancy on R.L., his sublet tenant. The tenant testified that he served R.L. with a notice to end tenancy. The sub-tenant R.L. denied that any such notice was ever served.

When two parties to a dispute provide equally reasonable 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 this case, I find that the tenant failed to prove that he served a notice to end the tenancy on the sub-tenant R.L. It is not enough to simply say that he served such a notice; a copy of the notice, along with any documentary evidence of such service, is required.

The sublet tenancy will continue until the tenant ends the sublet tenancy in accordance with the Act.

Given that the tenancy continues and given that the tenant's property (if there is any such property in the rental unit) is still in the rental unit, the tenant has no claim against sublet tenant R.L. unless and until the sublet tenancy ends. Moreover, as the tenant is still entitled to occupy the rental unit, the tenant has a legal right to access the rental unit in order to retrieve any property located therein. I further note that, without the written consent of the tenant N.H. and the landlord (M.J.), sub-tenant R.L. has *no legal authority* to change the locks on the rental unit. The tenant cannot be said to have abandoned the property in the rental by virtue of R.L. changing the locks and giving the tenant an arbitrary deadline of three days to collect his belongings.

I emphasize that R.L.'s landlord is, in fact, the tenant N.H. Rent is to be paid by the sublet tenant R.T. to N.H. It is then N.H.'s responsibility to pay rent to the landlord M.J.

Therefore, as the tenant has the legal right to access the rental, he has no claim against the sublet tenant R.T. for compensation, as any such claim is premature. His claim is dismissed with leave to reapply.

Should the tenant have any issues accessing his rental unit, he is at liberty to apply for dispute resolution seeking an order of possession, pursuant to section 54 of the Act. Keeping in mind, of course, that the tenant must first end the sublet by properly issuing a notice to end tenancy under section 49(3) of the Act (where the "landlord" is the tenant in a sublet arrangement, as is the case here).

Conclusion

For the reasons given above I dismiss the tenant's application with 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 Act.

Dated: June 17, 2019

Residential Tenancy Branch