



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for the return of the security deposit, for the return of personal property, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and the Tenant’s daughter were present for the teleconference hearing, although only the Tenant presented testimony and evidence. Two agents for the Landlord were also present (the “Landlords”).

The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Landlords did not submit any evidence prior to the hearing. They stated that they submitted evidence for a hearing they applied for that is scheduled for October 2019. However, they were advised that only evidence submitted and served for the current hearing would be considered.

During the hearing the Tenant also mentioned that he had submitted photos for previous hearings that he would like considered. Again, the parties were reminded that I was only able to reference the evidence submitted for this file and served in accordance with the *Residential Tenancy Branch Rules of Procedure*. Therefore, this decision will be based on the verbal testimony of both parties and the documentary evidence of the Tenant.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses.

Preliminary Matter

The spelling of the last name of the Landlord/property owner was confirmed by the agents present at the hearing. As the spelling was different than the Landlord's last name as stated on the application, this was amended to the name as stated by the agents. This amendment was made pursuant to Section 64(3)(c) of the Act.

At the outset of the hearing the Landlords mentioned that they had a scheduled hearing based on their own Application for Dispute Resolution in October 2019 and would like the joining of the files to be considered. The Landlords provided the file number for the upcoming hearing.

Upon consideration of joining the files, I decided that we would proceed with the Tenant's application only. As the Landlord's application was related to damage in the rental unit and was scheduled far enough into the future, I find that it may unfairly prejudice the Tenant to not have an opportunity to submit evidence in response to the Landlord's claim for damages. As such, this decision will address the Tenant's claims only and the hearing scheduled in October 2019 will be a separate matter.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to the return of the security deposit?

Should the Landlord be ordered to return the Tenant's personal property?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenant testified that the tenancy began on August 15, 2017 and although he began moving items into a new place on January 15, 2019, he had not yet moved out as he still had belongings in the rental unit that he was in the process of cleaning and moving.

The Landlord testified that the tenancy began on August 22, 2017 and ended at the end of January 2019. They stated that they are unclear of the exact date the tenancy ended as the Tenant did not communicate with them or return the keys.

The parties agreed that monthly rent was \$4,150.00 and a security deposit of \$2,075.00 was paid at the start of the tenancy.

The tenancy agreement was submitted into evidence by the Tenant and notes that the tenancy began on August 22, 2017 and confirms the monthly rent and security deposit amounts as stated by the parties.

The Tenant has applied for the return of the security deposit. The parties agreed that the security deposit has not been returned. The Tenant stated that he did not provide his forwarding address in writing, although the Landlord has his address as they have sent documents to him. The Tenant submitted that he did not provide permission for the Landlord to retain any amount from the security deposit.

The Landlord testified that they did not receive the Tenant's forwarding address in writing but received it through the Notice of Dispute Resolution Proceeding documents. They also testified that in a previous application for unpaid rent they had received permission to retain the security deposit towards the rent owing.

The Tenant also applied for the return of personal property. He stated that he was in the process of moving out beginning in January 2019, but as he had been granted a review hearing on a decision that granted the Landlord an Order of Possession, he was waiting for the results of that hearing in March or April 2019.

The two previous file numbers referenced by the parties during the hearing are included on the front page of this decision. Neither party submitted a copy of the previous decisions into evidence. However, the Landlord testified that in a previous hearing they received an Order of Possession based on unpaid rent, which the Tenant requested a review and which was then confirmed through a review hearing. The Tenant testified that due to his review application, the Order of Possession was suspended.

The Tenant further testified that he received a letter from the Landlord that they had removed his belongings from the rental unit and although they told him it was just garbage left behind, that it was actually prized possessions. The Tenant noted that the items disposed of by the Landlord included bedding, clothing, memorabilia, important paperwork and many other items.

The Tenant submitted into evidence a copy of an email from the Landlords dated May 3, 2019 in which the Landlords state that the Tenant abandoned the property and therefore they removed the garbage left behind. In the email the Landlord states that the Tenant moved out his belongings, cancelled the utilities and had not paid rent which led to their belief that the rental unit was abandoned.

The Tenant stated that due to a significant mould issue in the rental unit, his items needed thorough cleaning before he was able to move them into his new place, which was why they were removed right away. The Tenant stated that he did not abandon the rental unit and that the Landlord entered illegally to remove his personal belongings. He stated that he filed a report with the police.

The Landlords testified that the Tenant stopped paying rent in December 2018. They stated that they received an Order of Possession in January 2019, as well as a Monetary Order for unpaid rent. Although the Tenant was granted a review hearing, the Landlord stated that the Tenant did not attend the review hearing.

The Landlords stated that they provided a notice to enter the rental unit and found that the Tenant had left garbage behind. The Landlords stated that on April 26, 2019 they had a disposal company remove the junk which included food, garbage bags, mattresses, and other garbage. They stated that the rental unit had an odour and they had received complaints from neighbours.

The Tenant has also claimed an amount of \$32,750.00 which he stated is compensation for nine months of rent, up to the maximum amount allowable for his application. The Tenant testified that there were serious mould issues in the home that caused the unit to be unlivable. He stated that the period of rent compensation being claimed is from November or December 2017 through to the end of 2018.

The Tenant stated that during this time they "squatted" in some of the rooms in the rental unit where they were able to breathe, but due to the condition of the home he also rented an apartment downtown where they could stay safely. The Tenant stated that the mould caused damage to their belongings as well as concerns for their safety. He also stated that they had items in storage that were not able to be moved into the home due to the presence of mould. He noted that he complained to the Landlord many times but was ignored.

The Tenant also submitted that he received notice to move out through which the Landlord did not follow the proper process by providing a Four Month Notice for renovations. He stated that this notice was provided to him in a letter, not in the proper form and that the Landlord agreed that he did not have to pay December 2018 rent, which they later extended to two months compensation. The Tenant submitted a copy of the letter into evidence dated November 13, 2018.

The Landlord stated that they were unable to complete work at the rental unit while the Tenant was living there due to the presence of asbestos with the age of the home. They noted that the Tenant called the rental unit “unliveable” but continued to live there and refused to move. They stated that the damage in the home was underneath and not inside of the rental unit which they visited several times during the tenancy. They also stated that the Tenant had stopped paying rent beginning in December 2018.

The Tenant submitted copies of reports dated October 2018 which assessed for asbestos and mould in the rental unit. The report notes the presence of asbestos in various areas of the rental unit and also notes that mould was present in the garage wall.

Analysis

Regarding the Tenant's claim for the return of the security deposit, I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

While the Tenant stated that the Landlord has his address through the dispute resolution process, both parties were in agreement that the Tenant's forwarding address was not provided in writing. I note that providing a forwarding address in writing with a request for the return of the security deposit is a separate process from filing an Application for Dispute Resolution.

The Landlord stated that they had authorization to retain the security deposit towards unpaid rent. I note that Section 38(3) of the *Act* allows a landlord to retain the deposit if there is a previous Monetary Order that remains unpaid at the end of the tenancy. While the Landlord referenced a Monetary Order that was granted to them through a previous hearing, I find that there is insufficient evidence for me to determine whether this has been paid.

As such, I decline to make an order regarding the security deposit. Instead, I remind the parties that the Landlord does not have to return the deposit until a forwarding address is provided in writing and that the Landlord may have the right to retain the deposit in accordance with Section 38 of the *Act*. Therefore, I dismiss the Tenant's application for the return of the security deposit, with leave to reapply.

Regarding the Tenant's claim for the return of personal property, the parties were not in agreement as to whether the rental unit was abandoned and whether the items disposed of were garbage or of value. As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, when the two parties provide conflicting but equally plausible accounts of what occurred, it is up to the party with the burden of proof to submit sufficient testimony over and above their testimony to establish their claim.

In this matter, I find that the Tenant did not submit sufficient evidence that the Landlord disposed of his personal property. While he submitted an email from the Landlord, this email states the Landlord's position as expressed at the hearing – that the rental unit was abandoned, and the remaining garbage disposed of. In the absence of evidence such as an itemized list of the missing items, photos of any of the items, or further evidence that would establish that items of value were left behind, I am not satisfied that the Tenant met the burden of proof to determine that the Landlord disposed of personal property. Therefore, I dismiss the Tenant's claim for the return of personal property, without leave to reapply.

Regarding the Tenant's claim for compensation in the amount of \$32,750.00, I refer to Section 7(1) of the *Act* which states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss provides further guidance to determining if compensation is due with a four-part test as follows:

- 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.

While the Tenant testified that the rental unit was unliveable, I am not satisfied that he lost full use of the rental unit during the period in question such that he should receive full rent compensation for that period. I am also not satisfied that the Landlord was in breach of the *Act*. The Tenant submitted a report on the rental unit which confirmed the presence of asbestos in the rental unit as well as mould in the garage area. However, in the absence of further evidence regarding the condition of the home such as photos or evidence regarding the Tenant's inability to continue to reside in the home, I do not find that the Tenant met the burden of proof in establishing his claim that the unit was unliveable due to the presence of mould.

Based on the evidence before me, I do not find that the Tenant proved, on a balance of probabilities, that the Landlord was in breach of the *Act* and that the Tenant suffered a loss as a result. I am also not satisfied that the Tenant established the value of his loss as I do not find sufficient evidence that would establish that the Tenant lost full use of the rental unit for the period in question. As such, I am not satisfied that the Tenant has met the four-part test as outlined above. I decline to award any compensation for the return of rent in the amount of \$32,750.00 as claimed.

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenant's application is dismissed, without leave to reapply.

Conclusion

The Tenant's application for the return of the security deposit is dismissed, with leave to reapply.

The remainder of the Tenant's application is dismissed, without 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 *Residential Tenancy Act*.

Dated: July 10, 2019

Residential Tenancy Branch