



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, MNSD, RPP, FFT

Introduction

On May 30, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking a return of double their security deposit pursuant to Section 38 of the *Act*, seeking a return of their personal property pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 18, 2019, the Tenants amended their Application to increase the amount of monetary compensation they were seeking.

Tenant J.Y. attended the hearing and the Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by registered mail, but he was not sure when he did this. As well, he stated that he served the Landlord the Amendment by registered mail on June 18, 2019. The Landlord stated that he did not receive the Notice of Hearing package and he only received the codes to call into the hearing by calling the Residential Tenancy Branch. However, he confirmed that he received the Amendment on or around June 20, 2019 and that he was aware of the claims against him. While I am not satisfied that the Landlord was served the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act*, as the Landlord was aware of the case against him and was prepared to proceed, I am satisfied that the hearing could continue.

When the Tenant was asked if he served his evidence to the Landlord, he initially advised that he had done so for a previous hearing (the relevant file numbers are on the

first page of this decision) and that he was relying on that evidence. However, he then changed his testimony to say that he served some evidence with the Notice of Hearing package and that he subsequently served additional evidence with a USB stick by registered mail, but he was not sure of when he did this. Included in this package were the keys to the rental unit. As well, he advised that he did not confirm if the Landlord could view the content of the USB stick.

The Landlord advised that as he did not receive the Notice of Hearing package, he did not receive the majority of the Tenants' evidence as alleged. He did confirm that he received the USB stick and the keys to the rental unit in a registered mail package on or around June 21, 2019. He also stated that he could view the contents of the USB. Based on the Tenant's wavering and uncertain testimony up to that point regarding service of documents, I was not satisfied that the entirety of the Tenants' evidence was served to the Landlord on this file. As such, I have excluded the Tenants' evidence and will not consider it when rendering this decision.

The Landlord advised that he served his evidence to the Tenants by registered mail on July 2, 2019 (the registered mail tracking number is on the first page of this Application). The Tenant stated that he did not receive this evidence; however, the registered mail tracking history indicates that the Tenant signed to receive this package. Based on the Tenant's contradictory and questionable testimony, I am satisfied that the Landlord served his evidence to the Tenants, I have accepted his evidence, and I will consider it when rendering this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the return of personal property, that his other claims with the exception of the return of double the security deposit would be dismissed, and that the Tenants are at liberty to apply for these remaining claims under a new and separate Application.

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

- Are the Tenants entitled to a return of double their security deposit?
- Are the Tenants entitled to a return of their personal property?

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.

All parties agreed that the tenancy started on January 1, 2019 and that the Tenants vacated the rental unit on April 30, 2019. Rent was established at \$1,300.00 per month, due on the first of each month. A security deposit of \$650.00 was paid.

The Tenant advised that he informed the Landlord electronically at the end of March 2019 that they would be vacating the rental unit on April 30, 2019. As well, he confirmed that he never provided the Landlord with the proper written notice to end their tenancy in accordance with the *Act*. He stated that he was “not sure if he could end the tenancy”. However, he confirmed that they left the rental unit on April 30, 2019, that they left their property in the rental unit, and that they took the keys with them. He submitted that they attempted to return the keys to the Landlord multiple times after they left the rental unit; however, the Landlord was avoiding them. The Tenant could not clearly explain why they vacated the rental unit, why they left their property in the rental unit after leaving, nor why they took the keys with them as well; however, he alluded to being concerned with the possibility of not receiving the security deposit back.

The Landlord advised that he went into the rental unit on April 30, 2019 and it was clear that the Tenants had vacated the rental unit; however, they had left personal belongings behind. As a result, and as the Tenants had not returned the keys, he could not clean the rental unit or re-rent it as it was not clear if the Tenants would return. Thus, it sat empty with the Tenants' belongings still in the rental unit. He advised that he made several attempts to contact the Tenants and provide them with times to retrieve their property; however, the Tenants declined to do so as they were not available. Consequently, he sent a notification that if they did not pick up their property, he would have to put it into storage. Ultimately, as the Tenants did not respond, he advised them that their property was put into storage and that they could arrange to meet him to get

the storage lock and the information for where their property was stored. He submitted correspondence as documentary evidence to support this position. He stated that while he did not inspect the Tenants' belongings, much of this property left behind appeared to be seemingly empty boxes.

The Tenant advised that he attempted to discuss alternate times to retrieve his property, but they were unable to meet on the Landlord's schedule due to work commitments.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Firstly, with respect to the Tenants' request for a return of double the deposit, I find it important to note that this request is identical to their request on a previous Application (the related file numbers are listed on the first page of this decision). The Arbitrator rendered a decision on May 31, 2019 with respect to the deposit and awarded the Tenants a Monetary Order in the amount of **\$650.00** as a return of their deposit. Consequently, this matter has been addressed and I am not able to change or alter the previous Arbitrator's decision. As such, I dismiss this portion of the Tenants' claim in their entirety as it has been satisfied.

With respect to the Tenants' claims for a return of their personal property, it is not clear to me why the Tenants knowingly left the rental unit and left their personal property behind, while keeping the keys to the rental unit. Furthermore, given that the Tenants had the keys for approximately six weeks after they left the rental unit, it makes even less sense to me that they would not retrieve their personal property during this time as opposed to filing an Application for Dispute Resolution seeking an Order that their property be returned, especially as there is no evidence before me that the Landlord prevented them from retrieving their possessions. The Tenant's testimony throughout the hearing was contradictory, and their actions of leaving their property behind was contrary to common sense and ordinary human experience. As such, the Tenant's dubious testimony during the hearing and their actions after the tenancy ended cause me to doubt the credibility of any of the Tenant's submissions upon review.

Regardless, the undisputed evidence is that the Tenant wanted their personal property back and that the Landlord wanted to return it. Consequently, I engaged with the parties about how best to have the Tenants' property returned to them. The parties agreed that they would meet at the storage facility (the address was provided by the Landlord during the hearing and was repeated by the Tenant) on July 21, 2019 at 5:00 PM to arrange for the Tenants' property to be retrieved.

Ultimately, based on these conversations, I Order that the parties meet at the agreed upon designated storage facility on **July 21, 2019 at 5:00 PM** so that the Tenants can retrieve their property.

As the Tenants were unsuccessful in this Application, I decline to award recovery of the filing fee for this Application.

Conclusion

Based on my findings above, I dismiss the Tenants' Application for a return of double the security deposit without leave to reapply. The Tenants' other monetary claims were dismissed with leave to reapply. However, I Order that the parties meet at the agreed upon designated storage facility on **July 21, 2019 at 5:00 PM** so that the Tenants can retrieve their property.

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 19, 2019

Residential Tenancy Branch