



Dispute Resolution Services

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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* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord, the landlord's agent, the landlord's English language interpreter, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent and interpreter had permission to assist him and speak on his behalf at this hearing. This hearing lasted approximately 55 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord said that he did not serve the tenant with the landlord's evidence package. I notified the landlord that I could not consider his evidence package at the hearing or in my decision because it was not served to the tenant, as required.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2019 and ended on April 30, 2019. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord returned the deposit to the tenant.

Both parties agreed to the following facts. Both parties attended a previous Residential Tenancy Branch ("RTB") hearing before a different Arbitrator on April 30, 2019, after which a decision of May 1, 2019 was issued. The file number for that hearing appears on the front page of this decision. The Arbitrator found that the parties entered into a tenancy agreement, the landlord was required to return the tenant's first month's rent and security deposit, totalling \$1,500.00, to the tenant, and the tenant had two weeks from the date of that hearing to pick up his belongings from the rental unit. Both parties complied with all of the above orders. The Arbitrator gave the tenant leave to reapply for his monetary order because there was not enough time during the last hearing to discuss same. The tenant has now applied for this monetary order in this current application.

The tenant seeks a monetary order of \$2,227.95 for household items that he said he lost at the rental property. He said that as per the previous Arbitrator's order, he went to pick up his belongings from the rental unit, outside the basement where he had put them, and many items were missing. He explained that the landlord's agent agreed to watch his items that he left outside the basement.

The tenant stated that he did not have proof of all of the missing items because he bought a lot of them used. He provided a few receipts to support his application, saying the items were under warranty for two years. He claimed that he lost baby items, such as a high chair, household items, such as a couch, and other items. He explained that on April 30, 2019, he moved a lot of his items to storage and got help from a shelter, after living on the street with his family for a couple of days.

The landlord disputes the tenant's application. The landlord said that the tenant only has receipts adding up to \$1,235.00, not the entire amount of \$2,227.95 claimed in this application. He maintained that he was not responsible to record, watch, or store the tenant's belongings. He stated that the tenant did not return the rental unit key to him, despite being ordered to do so by the previous hearing Arbitrator. He explained that the tenant picked up his stuff in April 2019 but claimed for storage fees in May, July, and September 2019, after the date of the previous hearing on April 30, 2019.

The landlord's agent testified that she did not agree to watch over or take care of the tenant's belongings that were left outside the basement at the rental property.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application of \$2,227.95 without leave to reapply.

I find that the tenant was unable to confirm a breakdown for the above amount. The tenant provided a monetary order worksheet with his application but did not reference it during the hearing, nor did he confirm the amounts or what they represented. He did not go through his receipts, which did not add up to the above amount. I repeatedly asked the tenant during the lengthy hearing whether he wanted to reference his monetary order worksheet, explain his receipts or go through his evidence, but he did not do so. I find that the tenant was unable to prove parts 2, 3 and 4 of the above test.

I also find that the landlord was not responsible to watch or store the tenant's belongings for him. It is the tenant's responsibility to safeguard his own belongings. The tenant removed his belongings from the rental unit to the outside area. He left the belongings outside in the open, where they were vulnerable to theft, damage, and loss. The tenant could have found safe storage for the belongings or he could have had a friend or family member store or watch over the belongings but chose not to do so. I accept the landlord's and the landlord's agent's evidence that they did not agree to watch or store the tenant's belongings at the rental property.

Conclusion

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: November 18, 2019

Residential Tenancy Branch