



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, MNSD, RPP, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for the loss of furniture, for trespass by the landlord into the rental unit, for an illegal eviction and for emotional stress. The tenant also applied for the return of the security and pet deposits and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence. The tenant stated that he had not received the landlord's evidence. The landlord filed proof of having served the tenant a copy of his evidence by registered mail on December 03, 2019, to the forwarding address of the tenant. The landlord stated that he had tracked the package online and found that the tenant was served with multiple notices of pick up but as of the date of this hearing the package was still not picked up.

Residential Tenancy Policy Guideline # 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the landlord's evidence and pursuant to section 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's dispute resolution hearing package on December 08, 2019, 5 days after the mailing of the package.

The parties referred to a prior hearing that took place on June 03, 2019. A copy of the decision was filed into evidence. During that hearing the parties came to an agreement. The landlord agreed to accept the security deposit and pet deposit totaling \$1650.00, in full and final satisfaction of the outstanding rent of \$3,300.00. The tenant agreed to allow the landlord to retain the full amount of the deposits.

Despite the agreement reached during the hearing on June 03, 2019, the tenant has applied for the return of the deposits. Since this matter has already been dealt with, I dismiss this portion of the tenant's monetary claim.

I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Did the landlord dispose of the tenant's belongings without his permission? Was the tenant illegally evicted? Did the landlord enter the rental unit without providing at least 24 hours notice? Did the tenant suffer emotional stress? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started in November 2018. The monthly rent was \$1,650.00 due on the first of each month. The rental unit is a three-bedroom suite which is located on the upper floor of the owner's property. The lower floor is rented out separately. The respondent in this case (landlord) is a property management company that manages the rental unit for the owner. The owner looks after the lower rental unit himself.

The tenant failed to pay rent for April and May 2019 and the landlord served the tenant with two ten-day notices to end tenancy. The second one was dated May 02, 2019. The tenant disputed the notices and continued to occupy the rental unit without paying rent. A hearing was set for June 03, 2019.

The landlord testified that after serving the tenant with the notice to end tenancy, he tried to contact the tenant multiple times by email and telephone, without success. On May 23, 2019, the landlord received information from the owner of the property that the tenant had moved out. The landlord stated that on that day, May 23, 2019, he visited the rental unit along with another manager of the property management company. The

landlord stated that upon arrival, they found the unit was vacant and the doors were left unlocked. The door to the detached garage was also left unlocked. The landlord stated that the main house was completely empty but there were items in the garage that appeared to be of little to no value.

The landlord stated that the garage was shared by both tenants of the house (upper and lower levels) and therefore he was not sure of the ownership of the items left in the garage. The landlord stated that since the upper level was vacant, in the interest of keeping out squatters he hired a locksmith and had the locks changed.

The tenant stated that he arrived at the unit around 5.00 pm on May 23, 2019 and saw the locksmith at work. The landlord refused to allow him access to the items in the garage. The landlord stated that since the garage was shared by the upper and lower level tenants, he was not sure of which items belonged to this tenant, and therefore he denied the tenant access to the garage. The tenant called the police and was given access to the garage and allowed to remove his personal belongings. The landlord filed a copy of the police report which includes a list of the items retrieved by the tenant.

The tenant testified that since the hearing was scheduled for June 03, 2019, the landlord had no right to visit the unit or change the locks prior to that date. The tenant is claiming compensation in the amount of \$4,950.00 for what he believes is an illegal eviction by the landlord.

The tenant is also claiming compensation for the emotional stress that he and his wife suffered when they had to call the police to retrieve their belongings.

At first the tenant stated that a bed, mattress, headboard and two dressers were left inside the house. Later he stated that the bed was left in the garage and filed a photograph of a bed. The photograph does not show the room that the bed is in and the bed appears to be ready for use. The tenant also filed other photographs of the house which indicate that there is no furniture inside the house. The tenant stated that the photographs were taken on May 22, 2019.

The tenant provided contradictory testimony during the hearing. He maintained that he had not moved out on May 22 because he had possession of the unit up to June 03, 2019. The tenant also stated that the last night he spent there was May 22, 2019. When I asked the tenant where he would be sleeping as the house was empty of furniture, the tenant stated that he had air mattresses stored in his vehicle which he and

his family intended to use. The tenant is claiming \$2,100.00 to replace the furniture he says is missing.

The tenant testified that during the tenancy, the landlord visited the unit on 3-4 occasions without providing 24-hour notice. The tenant agreed that all the visits were related to plumbing issues. The landlord stated that a leak developed in the upper level suite which was dripping into the lower suite and therefore he had to fix it immediately. Upon being informed of the leak by the lower tenant the landlord visited the unit without notice. The landlord stated that notice was provided for all the other times by text message.

The tenant is claiming \$1,650.00 as compensation for the landlord trespassing on his property.

The tenant is claiming the following:

1.	Stolen Property	\$2,100.00
2.	Illegal Eviction	\$4,950.00
3.	Illegal Entry by Landlord	\$1,650.00
4.	Emotional Stress	\$1,500.00
5.	Filing Fee	\$100.00
	Total	\$10,300.00

Analysis

Based on the sworn testimony of both parties, I find as follows:

1. Stolen Property

The tenant stated that he had left his bed, mattress, head board and dressers in the house on May 22, 2019 and when he returned on May 23, 2019, they were missing from the house. The tenant also filed photographs of the house as taken on May 22, 2019 showing that the house is bereft of furniture.

The tenant then changed his testimony and stated that the bed was placed in the garage. The photograph of the bed filed by the tenant does not indicate where it is located as the bed covers the entire photograph. The bed appears to be ready for use with a turned down comforter. On a balance of probabilities, I find it is more likely than not that the bed was not stored in the garage.

After the police arrived on May 23, 2019, the tenant was permitted to take items from the garage. The police report lists the items that were present inside the garage as a pair of boots, vacuum cleaner and a truck tool box. These items were retrieved by the tenant. The report does not mention the presence of any bedroom furniture. The tenant is claiming the cost of replacing the bedroom furniture.

The tenant's testimony that he still lived in the home as of May 23 and that his bed was still inside the rental unit or the garage, did not make sense as he filed photographs taken on May 22, 2019, showing that the house had no furniture whatsoever. I find that the tenant has not proven his allegation that his bedroom furniture was stolen by the landlord and therefore his claim is dismissed.

2. Illegal Eviction - \$4,950.00

The tenant stated that since he had disputed the notice to end tenancy and a hearing was scheduled for June 03, 2019, he had possession of the rental unit till that date. The tenant maintained that he had not moved out but was illegally evicted on May 23, 2019 when the landlord changed the locks.

I find that landlord was credible when he testified that he visited the rental unit upon receiving information from the owner of the property that the tenant had moved out. I also accept the landlord's testimony that he found the rental unit vacant and unlocked and therefore he hired a locksmith to change the locks.

I find that it is reasonable to change the locks when the property is vacant and unlocked in the interest of protecting the property from squatters, wild animals, rodents etc.

The tenant testified that he and his family were going to continue to reside in the rental unit until a decision was made by the Arbitrator on June 03, 2019 and stated that he had air mattresses inside his vehicle that he intended to use.

The tenant's testimony about using air mattresses that he stored in his vehicle also did not make sense because if the family used air mattresses in the rental unit, he could have left them inside the rental unit as he would have no reason to store them in his vehicle.

The tenant also filed photographs of the rental unit which he said were taken on May 22, 2019. These photographs depict the rental unit as vacant. Based on the testimony of both parties, and the photographs filed into evidence, I find on a balance of

probabilities that it is more likely than not that tenant had moved out prior to May 22, 2019 and that the landlord did not evict him on May 23, 2019.

Accordingly the tenant's claim for illegal eviction is dismissed.

3. Illegal Entry by the Landlord - \$1,650.00

The tenant filed copies of text messages between the parties where the landlord is requesting entry for the purpose of fixing a leak, as he stood outside the door of the rental unit. The landlord stated that water started dripping into the suite below and upon being notified, the landlord took immediate steps to repair the plumbing and arrived at the rental unit without notice. The landlord added that he always provided notice prior to arriving at the rental unit and the visits were for the purpose of repairs. The tenant agreed that the landlord only visited when there was some repair work to be done but denied having received notice of entry from the landlord.

Even if I accept the tenant's testimony that the landlord visited without notice, I find that the landlord visited for the purpose of carrying out repairs. The tenant agreed that other than for repairs and maintenance, the landlord did not visit at all. The tenant had the option of making application for dispute resolution during the tenancy to put the landlord on notice that notice to enter was required by legislation and future breaches could entitle the tenant to compensation.

Based on the above, I dismiss the tenant's claim for compensation.

4. Emotional stress - \$1,500.00

The tenant stated that he was forced to call the police to gain entry access to his belongings in the garage and this caused him and his family emotional stress.

The landlord stated that he made several unsuccessful attempts to contact the tenant and when he received information that the tenant had moved out, he visited the rental unit to find it vacant and unlocked. I find that the landlord acted in a reasonable manner when changed the locks to protect the property.

The tenant chose not to respond to the landlord's emails and phone calls and therefore the landlord acted upon information received from the owner of the property and his observations when he visited the property on May 23, 2019.

I also accept the landlord's testimony that the garage was shared, and he was not aware of which items belonged to the tenant and which items belonged to the occupant

of the lower level unit. The police recorded the items taken by the tenant which would provide the landlord protection against being accountable to the other occupant of the lower level if some of his belongings went missing.

I find that the landlord is not responsible for any emotional stress the tenant suffered. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for emotional stress and therefore the tenant's claim for compensation is dismissed.

5. Filing Fee - \$100

The tenant has not proven his claim and therefore he is not entitled to the recovery of the filing fee.

Conclusion

The tenant's claim is dismissed in its entirety.

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: December 20, 2019

Residential Tenancy Branch