



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "*Act*"), made on December 2, 2019. The Tenant applied for an order that the Landlord return the Tenant's personal property as for a monetary order relating to compensation.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on December 4, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord confirmed that he did not submit any documentary evidence in preparation for the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order for the Landlord to return the Tenant's personal property, pursuant to Section 65 of the *Act*?

2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2019. During the tenancy, rent in the amount of \$2,200.00 was due to the Landlord on the first day of each month. A security deposit in the amount of \$2,200.00 was paid, which the Landlord continues to hold.

The Tenant stated that on September 6, 2019 she was admitted to the hospital. The Tenant acknowledged that she did not pay rent to the Landlord for September 2019 and that she was unable to use her phone while she was in the hospital to contact the Landlord. The Tenant stated she was released from the hospital on September 12, 2019 at which point she returned to the rental unit to find that the Landlord had removed all her personal property from the rental unit as well as her vehicle and had put them into storage.

The Tenant stated that she has made many requests to the Landlord to return her personal property, however, the Landlord is withholding her personal possession in exchange for the Tenant to repay him for damage she caused to the rental unit as well as for the storage fees incurred.

The Tenant also stated that she is claiming \$20,000.00 in relation to her losing her employment as a result of the Landlord withholding her vehicle. The Tenant stated that she was earning \$12,000.00 per month but is only claiming for \$10,000.00 for each month. The Tenant stated that she was left with no means of transportation, therefore, could not attend work which led to her termination.

In response, the Landlord stated that the Tenant's post-dated rent cheque for the month of September 2019 was returned as NSF on September 5, 2019. The Landlord stated that on September 10, 2019 he was contacted by the Police as they were concerned for the Tenant's wellbeing. The Landlord stated that the Police forcibly removed the Tenant from the rental unit and brought her to the hospital. According to the Landlord, the Police had advised him that there were concerns regarding the condition of the rental unit.

The Landlord stated that he attended the rental unit on September 13, 2019 at which point he found that the rental unit was dirty and had sustained water damage as a result of the Tenant attaching a garden hose to the kitchen faucet which caused a leak throughout the rental unit.

The Landlord stated that the rental unit was brand new prior to the commencement of the tenancy. The Landlord stated that as a result of the Tenant not paying rent for September 2019, the fact that she was admitted to the hospital by Police, and the poor condition of the rental unit, he decided the tenancy would end and that the Tenant was no longer permitted to return to the rental unit.

The Landlord stated that on September 14, 2019 he hired a moving company to attend the rental unit and pack up all the Tenant's belongings and transport them to a nearby storage facility. The Landlord stated that he was unsure as to when the Tenant would be released from the hospital.

The Landlord stated that it wasn't until September 24 or 25, 2019 that the Tenant contacted the Landlord regarding the whereabouts of her belongings. The Landlord stated that on September 25, 2019 he provided the Tenant with full access to the storage locker to remove her belongings and vehicle from storage. The Landlord stated that the Tenant removed her vehicle from storage, only to later return it to the storage facility shortly thereafter.

The Landlord stated that the parties had a verbal agreement that the Landlord would pay the cost of the storage fees up until the Landlord received a notification for the storage facility on September 30, 2019 stating that the Tenant had returned her vehicle and that it appeared as though she had no intent on removing her possession. The Landlord stated that after this point, he felt as though he should not be responsible for any further costs associated with the storage of the Tenant's personal property.

The Tenant confirmed that she picked up her vehicle from the storage facility and that she later returned to the storage facility at which point her car was taken as collateral for the unpaid storage fees. The Tenant stated that currently she has no access to her personal possession and that the Landlord is requesting payment for storage costs and repairs to the damaged rental unit prior to her receiving her personal property.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 24(1) of the Residential Tenancy Branch Regulations (the "Regulations");

A landlord may consider that a tenant has abandoned personal property if
(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph

(1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

In this case, I accept that both parties agreed that the Tenant was admitted to the hospital on September 6, 2019 and that there was some uncertainty as to when the Tenant would be released from the hospital. I accept that the Tenant's postdated rent cheque for September 2019 was returned to the Landlord as NSF. The parties agreed that the Landlord removed the Tenant's personal property and vehicle from the rental property on September 14, 2019 and placed them in a storage facility.

I find that the Landlord can only remove the Tenant's personal property if the Tenant has abandoned the rental unit, pursuant to Section 24 of the Regulations. In this case, I find that the Landlord provided insufficient evidence that the tenancy had ended in accordance with the Act, nor did the Landlord provide evidence that he received an

express oral or written notice of the Tenant's intention not to return to the residential property. Lastly, I find that it is reasonable, given the circumstances described by both parties, that the Tenant could reasonably be expected to return to the residential property.

As such, I find that the rental unit had not been abandoned by the Tenant and that the Landlord had no authority to remove the Tenant's personal property from the rental property.

According to Section 28(c) of the *Act*, A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following;

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) **exclusive possession of the rental unit** subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

According to Section 65(1)(e) if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make an order that personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned.

In light of the above, **I order that the Landlord return the Tenant's personal property as soon as possible, but no later than one (1) week after receipt of this decision. The Landlord is responsible for paying the costs associated with storage in order for the Tenant to claim her personal property.** Should the Landlord fail to make arrangements to return the Tenant's personal property to the Tenant within one (1) week after receiving this decision, the Tenant is at liberty to seek a remedy under the *Act* for compensation in relation to obtaining her property should the Landlord not comply.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is seeking \$20,000.00 for lost wages as a result of her employment ending due to the fact that her vehicle had been placed in storage by the Landlord and she was left with no transportation to attend her place of employment.

While I have found that the Landlord had no authority under the *Act* to remove the Tenant's vehicle and place it in storage, I find that the Tenant has provided insufficient evidence to support that she lost her employment as a result. I find that the Tenant provided insufficient evidence to demonstrate that she lost her employment, as well as insufficient evidence to support her lost wages. Furthermore, I find that the Tenant provided insufficient evidence to demonstrate that she was unable to make use of other means of transportation to her place of employment to mitigate her loss.

In light of the above, I find that the Tenant has provided insufficient evidence to support her claim for compensation relating to lost wages in the amount of \$20,000.00. As such, I dismiss the Tenant's monetary claim without leave to reapply.

Conclusion

The Landlord had no authority under the *Act* to remove the Tenant's personal property. I order that the Landlord make arrangements to return the Tenant's personal property to her as soon as possible but to be completed no later than one (1) week from the date the Landlord receives this decision. The Landlord is responsible for any storage costs incurred.

The Tenant's monetary claim for compensation relating to loss of wages 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: January 22, 2020

Residential Tenancy Branch