



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP,

Introduction

On March 3, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and for the return of personal property.

The matter was scheduled as a teleconference hearing. The Tenant and the Landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They provided affirmed oral testimony and were given an opportunity to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On April 2, 2020 the Landlord provided the Residential Tenancy Branch (“RTB”) with documentary evidence in response to the Tenant’s application. The Landlord testified that he did not send a copy of his evidence to the Tenant. The Tenant testified that he sent the Landlord his forwarding address on March 3, 2020 using registered mail. The Landlord confirmed that he received the Tenant’s forwarding address but did not send him a copy of the documentary evidence.

I find that the Landlord received the Tenants address and was aware of the address prior to providing his evidence to the RTB. It is a fundamental principle of administrative

fairness that a party to a proceeding receive disclosure of documents that will be considered and have a reasonable opportunity to consider it and respond.

I find that the Landlord did not provide the Tenant with a copy of his evidence in accordance with the RTB Rules of Procedure. I find that it would be unfair to the Tenant for me to consider evidence that the Tenant has not seen; therefore, the Landlord's evidence is not accepted and will not be considered in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss?
- Is the Tenant entitled to the return of personal property?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in March 2019 on a month to month basis. The Tenant was renting a room in a self-contained suite along with two other occupants who also rented rooms under separate tenancy agreements with the Landlord. The Tenant and the other two occupants shared the common areas of the rental unit. Rent in the amount of \$400.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$200.00 to the Landlord.

The Tenant testified that he moved out of the rental unit on February 29, 2020 after he was pressured to leave by the Landlord.

The Landlord provided testimony confirming that the Tenant moved out of the rental unit on February 29, 2020.

The Tenant testified that he did not receive a notice to end tenancy from the Landlord. He testified that in January 2020 the Landlord verbally asked the Tenant and the other occupants to vacate the rental unit by the end of February 2020. The Tenant testified that the Landlord posted a note on his door that directed the Tenant to clean the unit and his room before February 29, and that anything after the 29th will be thrown the garbage to make room for renovation. The Tenant provided a copy of the note.

The Tenant submitted that he believed that the Landlord was obligated to serve him a notice to end tenancy under section 49 of the Act (a Two Month Notice). The Tenant submitted that on February 3, 2020 he left a copy of information regarding section 49 of the Act in the Landlord's mailbox.

The Tenant testified that he moved out of the rental unit on February 29th with the assistance of his mother. He testified that his mother has a small car and they needed to make three trips to move all of his belongings.

The Tenant testified that while he was moving out, the Landlord called him at 4:30 pm and the Tenant informed him that he would be there in 20 minutes. The Tenant testified that when he arrived at the rental unit just after 5:00 pm to get the remainder of his items, the Landlord was not present on the property. The Tenant testified that it appeared that the door lock for access to the unit had been changed; however, he later clarified that he entered so perhaps it was just jammed.

The Tenant testified that he entered the rental unit and unlocked his room to find his remaining possessions were gone. The Tenant testified that the Landlord is the only other person who had a key to his room. The Tenant testified that the other occupants had moved out of the rental unit.

The Tenant testified that he reported the incident to the police and provided a police file number. Other than a police file number the Tenant did not provide any documentary evidence such as a police report.

The Tenant provided a copy of a letter from his mother dated April 29, 2020 which provides that she helped her son move his stuff to a storage facility and on the third trip a duffel bag, laptop, and backpack were gone. The Tenant's mother was not present at the hearing to give affirmed testimony.

The Tenant is seeking the return of his personal items or compensation for his loss as follows:

Emergency moving expenses	\$200.00
Laptop Computer	\$800.00
Backpack	\$80.00
Work Clothes and tools	\$600.00
Down Blanket and pillows	\$300.00
Birth Certificate	\$100.00
Glasses	\$100.00
Duffel Bag	\$100.00
Personal Clothes	\$500.00
Income Tax papers	\$ not specified

The Tenant is also seeking compensation for lost wages for the time it took him to file and amend the application for dispute resolution and for the costs of service using registered mail.

In reply, the Landlord provided affirmed testimony that he did not take the Tenant's personal items and did not dispose of the Tenant's items.

The Landlord testified that he did not tell the Tenant to vacate the room due to renovations. When the Landlord was asked whether or not he or his agent posted a note to the Tenant's door directing him to clean and remove personal items he responded "no".

The Landlord testified that the Tenant left because of the condition of the rental unit and did not pay his rent for February 2020. The Landlord testified that he verbally mentioned to the Tenants that the rental unit would need repair that he did not have money to make repairs.

The Landlord testified that in February 2020 he had a contractor in the unit who quoted that it would cost \$12,000.00 to repair the bathroom in the rental unit. The Landlord testified that he has not re-rented the unit because repairs are needed and there are safety issues, and he does not have money to make the repairs. He testified that he has not performed any repairs.

The Landlord testified that the other two occupants of the rental unit moved out of the rental unit on February 1, 2020 and February 29, 2020.

The Tenant provided testimony on each of his claims listed above including the age of the items and their cost. For example, the Tenant is claiming \$100.00 for a duffel bag that the Tenant testified cost him \$45.00 for from a thrift store. The Tenant is seeking \$800.00 for a laptop computer that he testified was 8 years old. The Tenant did not provide any documentary / photographic evidence to prove that he owned the items being claimed. The Tenant did not provide any receipts for the original purchase of any of the items being claimed and did not provide any quotes or advertisements showing the replacement cost for the items.

The Landlord was provided an opportunity to respond to each of the Tenants claims but declined to provide any response other than stating he did not take and dispose of the Tenant's personal items.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant 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 Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

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. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 44 of the Act provides information on how a tenancy may end; a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
- section 45 [tenant's notice];
 - section 46 [landlord's notice: non-payment of rent];
 - section 47 [landlord's notice: cause];
 - section 48 [landlord's notice: end of employment];
 - section 49 [landlord's notice: landlord's use of property];
 - section 49.1 [landlord's notice: tenant ceases to qualify];
 - section 50 [tenant may end tenancy early];
 - (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended.

Based on the affirmed testimony of the Landlord and Tenant, the documentary evidence, and on a balance of probabilities, I make the following findings:

I find that it is more likely than not that the Landlord directed the Tenant to vacate the rental unit. I find that verbal notice to end the tenancy is not proper notice to end a tenancy and is not an effective notice in accordance with section 52 of the Act.

I accept the Tenant's submission that a Landlord is required to serve a notice to end tenancy under section 49 of the Act to end a tenancy for the purpose of renovations. However, since I find that the Landlord never served a proper notice to end tenancy, I find that the tenancy did not end due to any notice given by the Landlord. The Tenant was under no legal requirement or obligation under the Act to vacate the rental unit.

In accordance with section 51 of the Act, entitlement to compensation flows upon receipt of a proper notice to end tenancy issued under section 49 of the Act. Since a proper notice to end tenancy was not issued by the Landlord, the Tenant did not have to vacate the rental unit and did not have a right to receive compensation from the Landlord in the amount of one month's rent.

I find that the tenancy ended in accordance with section 44 of the Act when the Tenant chose to vacate the rental unit on February 29, 2020. Since the Tenant chose to vacate the rental unit, the Tenant's claim for moving expenses is dismissed without leave to reapply.

Compensation for Loss of Personal Property

The Landlord provided affirmed testimony denying all responsibility for taking the Tenant's possessions. While I am mindful that the Tenant provided a note that he found on his door stating anything after the 29th will be thrown the garbage to make room for renovation, I am also mindful that the Landlord testified that neither he or an agent acting on his behalf posted the note.

The burden of proof lies with the applicant /Tenant to establish the claim. The first element that the Tenant must satisfy is proof that the loss exists.

I have reviewed the Tenant's documentary evidence and there is insufficient evidence to prove the existence of any of the items being claimed. The Tenant did not provide any photographs or receipts. A letter from the Tenant's mother suggests that the

Tenant owned a few of the items being claimed; however, she was not present at the hearing to provide direct testimony.

The second element that the Tenant must prove on a balance of probabilities is that the loss occurred due to the actions or neglect of the Landlord. The Landlord denied all responsibility for leaving the note and for taking any of the Tenant's possessions. The Tenant did not actually observe the Landlord take his possessions. I find that the Tenant has provided insufficient evidence to prove that the Landlord is responsible for taking or disposing of the Tenant's personal property.

The third element that the Tenant must prove is the actual amount required to compensate the Tenant for the claimed loss. The Tenant has estimated the replacement cost of his claims but has not provided any evidence to support the amounts being claimed. In some cases, such as the claim for the duffel bag, the Tenant is seeking to recover more compensation than the amount he actually paid.

Even if the Tenant had proven that the Landlord was responsible for the loss of his possessions, I find that the Tenant would not be successful because he provided insufficient evidence to prove the actual amount required to compensate him for his loss.

For the reasons I have provided above the Tenant provided insufficient evidence to establish the claim. The Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant provided insufficient evidence to establish that the Landlord disposed of his personal property and is responsible to compensate him for the replacement cost of the items.

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: May 6, 2020