



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP, MNDCT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for the landlord to return the tenant's personal property pursuant to section 65; and
- A monetary order for damages or compensation pursuant to section 67.

All named parties attended the hearing. As both sides were present, service of documents was confirmed. The landlords confirmed receipt of the tenants' application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following order:

By consent, the landlord agrees that the co-tenant, PH can attend alone at the landlord's property on a single occasion sometime after 11:00 a.m. on July 7, 2020 to retrieve any remaining bicycles and/or bicycle equipment belonging to the tenants.

Both parties testified and agreed at the hearing that they understood and agreed to the above term, free of any duress or coercion.

The tenants filed this application when their laptop computer was in the possession of the landlord. The tenants understood that the computer is now in the possession of the RCMP. As such, the tenants understood that their application to have the landlord return the computer cannot be granted by this arbitrator. This portion of the tenants' application is dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord be required to return the property of the tenants?

Are the tenants entitled to a monetary order?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant PH ("tenant") provided the following testimony. The landlord is his aunt and the tenancy involves the basement portion of the landlord's detached house. There is no separate kitchen facility in the house, however the tenant had his own bath, hot plate, microwave, toaster oven and sink to wash dishes. The tenant never shared the landlord's kitchen with her.

The tenancy began in February 2020 with rent set at \$1,000.00 per month, payable on the first day of the month by e-transfer. No security deposit was exchanged with the landlord and no condition inspection report was done at commencement.

The parties signed an agreement that the tenants would move out of the basement on May 1st, however their new accommodation would not be ready until May 15th. The landlord agreed to allow the tenants to remain living there until that day. On May 7th, their new landlord told them their place would be ready by May 8th and they commenced moving out. The tenant testified they moved into their new accommodations on May 8th. The tenants did not have any moving boxes, so they packed using black garbage bags. The tenant acknowledged there was no way to differentiate which bags contained garbage and which bags contained their personal belongings as everything got mixed together when they packed.

The tenants only have a small vehicle to transport their goods, making moving difficult for them. The tenant SS testified that she got sick and couldn't go back to get her

belongings. In her application, the tenant states that she had to self isolate for 14 days after moving out. When she got back, all her belongings had been left outside, being rained on, completely destroyed. The tenants provided photos of some of their belongings outside; some in black garbage bags.

The tenants seek compensation for children's clothing, antique furniture, clothing for 4 children, jewelry, make up, tvs, laptop, game consoles, crystal bowl and vase, 2 adult mountain bikes 2 teen bikes, 2 kids bikes and 2 scooters. The tenants did not provide receipts for any of the items or evidence of replacement costs for any of the items they seek compensation for. The tenant testified that several of the bikes he seeks compensation for were partial bikes, not fully functional yet.

On May 18th, the tenant asked the landlord for the printer he left behind. The landlord told the tenant she would leave it outside for the tenant to pick up however when he went there approximately 2 hours later, it was gone. The tenant seeks to have the landlord return the printer, however the landlord testified she no longer has it.

The landlords provided the following testimony. The parties signed an agreement that the tenants would be gone by May 1st. On that day, the tenants advised them that they couldn't move into their new accommodation until May 15th. The tenants began to move on May 7th, and they continued to move on May 9th and 10th. On May 10th, much of the tenants' personal belongings, furniture and garbage was left behind. The landlord sent many texts to the tenants asking them to come retrieve their possessions, however the texts went unanswered. The landlord told the tenants that whatever was left inside by May 15th would be put outside for the tenants to collect. Nothing was heard from the tenants until May 18th when the tenant asked for his printer.

The landlord testified that when he saw the couch outside by the dumpster, the tenant told her he was going to chainsaw it up to get it into the dumpster. He even offered to help the landlord put it in the dumpster hired by the landlord. The landlord could not discern garbage from items of value belonging to the tenant, as items were all placed in black garbage bags. The dining chairs had their seats removed by the tenant prior to them moving out and the tenant's china cabinet and boat are still left on the property awaiting pickup.

The two operable children bikes were dropped off at the Ministry of Children and Families for pickup by the tenants' family case worker. The other partially built ones are to be picked up by the tenant, in accordance with the settlement agreement.

Analysis – return of tenant's items

The tenant sought return of bikes, printer and laptop pursuant to section 65. Two bikes were returned to the tenant via the Ministry of Children and Families and the others will be returned by settlement agreement by tomorrow. The tenant acknowledges the laptop is no longer in the landlord's possession and cannot be returned by the landlord. As for the printer, I am satisfied the landlord and tenant made arrangements for the tenant to come pick it up on May 18th, however the tenant did not do so before it got stolen. As such, I do not find the landlord is in possession of the tenant's printer and the application to return it to the tenant is dismissed without leave to reapply.

Analysis – monetary compensation

The tenant seeks compensation in the amount of \$10,000.00 for items that were 'left outside in the rain' to be destroyed.

Section 7 of the Act states: 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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In order to succeed in this case, the tenants must prove the existence of damage. Here, the tenants have provided photographs of piles of their belongings they say got 'destroyed' in the rain. I reviewed the photographs provided and I conclude that the majority of the photos appear to depict mostly rubbish, with the exception of some dining chairs that do not appear to have sustained any water damage. In fact, based on

the photographs, the 'destruction' of the tenants goods by rain is not apparent. Most of the items appear dry and reasonably undamaged. Second, the fact that they packed their children's belongings in black garbage bags makes it difficult for me to determine the extent of damage the tenants claim or for me to be able to distinguish what items the tenants claim were valuable as opposed to things destined for the dumpster. I find the tenants' claim fails on the first point, to prove the existence of the damage.

Second, the tenants must prove there was a violation of the Act, regulations or tenancy agreement by the landlord. The tenants testified that they moved out of the rental unit on May 8th with the intent of retrieving the remainder of their belongings by May 15th, the last day of their tenancy as agreed to by all parties. In their application, the tenants state they started moving out on May 7th, however one of the tenants got sick and self isolated for 14 days.

14 days after May 7th is May 21st, at least a week beyond the last day of tenancy (May 15th) the parties agreed to. I find it reasonable that the landlords would want their basement back, not filled with the tenants' possessions after May 15th, and I accept the landlord's testimony that they diligently tried to contact the tenants to remove their belongings before moving them outside. In contrast, the tenants did not provide any testimony or evidence stating they made arrangements to either hire movers or enlist friends or family to assist them in taking away their possessions between May 7th and May 15th. Both parties clearly testified that May 15th was the final day for the tenants to occupy the basement, yet the tenants appear to claim the landlord was under an obligation to keep storing their goods until it was convenient for the tenants to come retrieve them. I find the evidence does not support the tenant's claim that the landlord breached the Act, regulations or tenancy agreement. I find their application fails on point 2 of the 4 point test.

The 3rd point is the tenants' obligation to prove the value of their claim. No receipts for the items they claim monetary compensation for were provided, nor were there any estimates of replacement value supplied. The tenants could not provide any justification for their claim of \$10,000.00 as an estimate of the value of their possessions. The claim fails on the third point.

Lastly, the tenants are obligated to mitigate their damage. The tenants began moving out of the landlord's basement on May 7th and then just stopped moving because one of the tenants became sick. No alternate arrangements were made to retrieve their goods, leaving the landlord a basement full of the tenants' belongings. I accept the landlord's testimony that they tried to have the tenants remove their possessions and were met

with no response. Once again, the tenants are responsible for ensuring their possessions are taken away by the time the tenancy ends; it is not the responsibility of the landlord to keep them secure until it is convenient for them to come get them. By not removing their belongings before the tenancy ended, I find the tenants did not mitigate their claim for damage. The claim fails on the 4th point of the test.

The tenants' application for a monetary order is dismissed without leave to reapply.

Conclusion

By consent, the landlord agrees that the co-tenant, PH can attend alone at the landlord's property on a single occasion sometime after 11:00 a.m. on July 7, 2020 to retrieve any remaining bicycles and/or bicycle equipment belonging to the tenants.

The remainder of the tenants' application is dismissed without leave to reapply.

This decision is final and binding upon the parties and 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 07, 2020

Residential Tenancy Branch