



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Haven Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

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

- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary order, as sought?

Can the tenant's filing fee be recovered?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's 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 parties agree on the following facts. The rental unit is the upper unit of a detached house containing an upper and lower unit. The lower unit is tenanted by unrelated tenants.

The tenant gave the following testimony. The landlord was awarded an Order of Possession from the Residential Tenancy Branch on August 8, 2018, following a hearing on August 3rd. A copy of the decision was provided as evidence by the tenant. The tenant paid rent for the month of August while awaiting the decision. The tenant testified the landlord agreed he could stay until the end of August.

On September 5th, the parties exchanged emails about where the keys were left. On September 10th, the landlord asked the tenant when he would be returning to remove his belongings. The tenant testified he responded to the landlord's email the following day. In the response, the tenant writes

Sorry for the late reply I do hope to be back there after this coming weekend to remove the rest of my personal belongings I cannot do it sooner because I am currently in the hospital dealing with an infection in my leg. Just to give you an idea of what I'm dealing with I've taken the liberty of sending you photos.

The tenant testified he took his possessions out of the rental unit and left them outside, neatly stacked, so he could pick them up later. He fully intended on returning to retrieve his possessions, however the tenant got a leg infection which sent him to the hospital. The tenant testified he was discharged from the hospital the following Sunday, however the tenant provided no documentary evidence to support this part of his testimony. He estimates he was in the hospital with the leg infection for less than a week.

When he got out of the hospital, the tenant was informed by lower unit tenants that the landlord had thrown his possessions in the garbage. The tenant submits that under the circumstances, the landlord failed to obtain the documents supplementary to an order of possession. Because of this, the tenant submits he should be compensated for the value of the goods he left outside while he remained in the hospital awaiting discharge.

The tenant acknowledged that he left his possessions outside in the yard of the rental unit to be retrieved by him sometime in the future. His intent was to bring his possessions to a storage locker. He tried to get co-workers to assist him but that 'didn't pan out'. He has no family available to him to remove his possessions from

the landlord's yard. He didn't have the money to hire movers. He didn't offer the landlord any money to store his goods in the yard while he awaited discharge from the hospital.

The tenant provided photos of the items left in the yard of the rental unit, together with an inventory list and their values. No supplementary evidence related to the value of the goods, such as bills of sale or advertisements of similarly priced goods were provided as evidence.

The landlord provided the following testimony. The reason the landlord allowed the tenant to remain in the rental unit throughout August 2018 was because the tenant hadn't begun to vacate in early August. He emailed the tenant asking when the tenant would remove his remaining belongings on September 10th and got an ambiguous response from the tenant the following day. The landlord submits that the tenant figured he could just *'walk in whenever he wants to get his stuff'*. There was no communication from the tenant after this September 10, 2018 email until September 15, 2018 when the tenant asked the landlord's agent which bailiff was hired to remove his belongings. The tenant's lack of communication with the landlord left the landlord feeling that the tenant was taking advantage of the landlord by keeping his possessions strewn about the yard with no definitive date to come take it away.

The landlord submits that it's impossible to determine whether the tenant valued any of his possessions, given that he left them outdoors, unprotected from the elements and rain. Most troubling to the landlord was the fact that the tenant left his pet rabbits outside without food and water in a cage for an indeterminate time while awaiting the tenant's return. The landlord had to contact the SPCA to take the rabbits away. The landlord sent an email to the tenant on September 18th regarding the rabbits, however there was no communication regarding the tenant's other possessions. According to the landlord, the tenant responded to the September 18th email saying he is still dealing with medical issues and can't remove his possessions.

The landlord argues that there is no evidence from the tenant regarding the date he was discharged from the hospital, making it impossible to determine if and when the tenant came to see his goods were gone. The landlord also argues that the tenant didn't provide any evidence as to the value of his possessions. The tenant is claiming compensation for things not depicted in the photos and for the contents of storage bins that cannot be readily identified.

Analysis

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.

Part 5 of the Residential Tenancy Regulations deals with abandonment of personal property.

Section 24(1)(a)

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

Section 24(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.

Section 24(5)

(1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

The tenancy ended when the arbitrator of the Residential Tenancy Branch ordered it ended by the Order of Possession granted August 8, 2018. The evidence of the emails between the parties shows that the tenant left the keys for the landlord in the keyhole by September 5, 2018 at the very latest. Pursuant to section 24(1)(a), I find the tenant's goods are considered abandoned.

When the landlord asked the tenant by email on September 10, 2018 when the tenant was going to remove his belongings, the tenant gave a vague, indefinite answer. While I do not question whether the tenant ever intended on returning to retrieve his possessions, the series of events leading to the disposal leads me to believe the landlord disposed of the goods in accordance with section 24(5)(2)(a) and (b) of the regulations for the reasons as set out below.

The tenant left his possessions out in the yard, subject to rain and possibly theft. While neither party raised the issue of theft, the tenant's lack of planning to protect his possessions from both the elements and theft leads me to believe he wasn't terribly concerned about them. Second, I find the tenant's lack of communication to the landlord regarding his possessions to be indicative of his attitude towards his goods. The message saying *'I do hope to be back there after this coming weekend'* gives no specific timeframe or regular updates to the landlord on his prognosis regarding the leg infection. This indicates to me that the tenant was perfectly happy leaving his possessions outside on the property where he no longer lives or pays rent. That is, until it was convenient for him to get them. For these reasons, I find the landlord reasonably believed (a) the property had a total market value of less than \$500.00 and (b) that the cost of removing, storing and selling the items would be less than the proceeds of the sale, if they were to be sold. I find there has been no breach of the regulations by the landlord in disposing of the tenant's possessions.

Given this finding, I find the tenant has failed to establish points 1 and 2 of the 4-point test.

Turning to point 3: I find the tenant has not provided any way for me to ostensibly determine the value of the items he claims compensation for. The list of goods he provided was not accompanied by any advertisements or invoiced descriptions for me to compare the value of his item to similar ones for sale. No proof of sale or ownership of the items lost was presented. The tenant has not provided sufficient evidence to establish the value of the loss he claims for, point 3 of the 4-point test.

Lastly, the evidence is clear that the tenant a) left his goods outside on the property he no longer pays rent for, creating a potential hazard for the tenants still living in the lower unit of the house; b) made no prior arrangements with the landlord to pay for storage of his goods at his former residence; c) didn't make alternate arrangements to get his possessions out of the landlord's yard; and d) never gave the landlord an exact date as to when he would come back and get his possessions. At the very least, the tenant should have communicated with the landlord regularly to keep the landlord apprised of his intentions to get them back. Point 4 of the 4-point test, proof that the tenant mitigated his losses was not sufficiently established.

For these reasons, the tenant's claim is dismissed without leave to reapply.

Conclusion

The tenant's claim 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: August 13, 2020

Residential Tenancy Branch