



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the tenant, and the tenant's girlfriend attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant's girlfriend did not testify at this hearing. This hearing lasted approximately 32 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord stated that she personally served the tenant with the landlord's evidence package on August 20, 2020. The tenant stated that he did not receive the landlord's evidence. Since I was not required to consider the landlord's evidence, as the landlord did not refer to it during the hearing, I do not find it necessary to record any findings regarding service of this evidence.

During the hearing, both parties confirmed that the tenant was vacating the rental unit on September 30, 2020, pursuant to an RTB order of possession. The tenant stated that the landlord was not currently entering his rental unit without notice or permission.

Accordingly, the tenant's application for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2013. Both parties signed a written tenancy agreement. Monthly rent of \$1,250.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit.

The tenant seeks a monetary order of \$34,942.00 plus the \$100.00 application filing fee.

The tenant testified regarding the following facts. He went to jail in 2019 and the landlord called the police and had the tenant's girlfriend and son removed from the rental unit by police escort. The landlord changed the locks to the rental unit. Some other person, who the tenant does not know, came in the same day and the landlord let him into the rental unit. That person took the tenant's possessions from the rental unit. The tenant talked to that person and that person made a statement to police. It was not a theft and the police could not do anything because the landlord let the person into the rental unit. The tenant gave a list of the missing items to the landlord. The landlord is required to secure the tenant's items for six months if the rental unit is abandoned.

The landlord stated the following facts. The tenant was in jail from January to May 2019 and was not living in the rental unit. On May 10, 2019, the tenant's girlfriend brought in three men and her son to move stuff out of the rental unit. She rented a yellow van to move stuff out because she had not paid the rent. The landlord asked where the tenant was, and the tenant's girlfriend never answered her. There was nothing left in the rental

unit except garbage. The landlord called police because there was noise in the rental unit, so the police removed the tenant's girlfriend, and told the landlord to lock the door, since there was nothing left in the rental unit. The landlord changed the locks to the rental unit on the advice of the police. The tenant gave the landlord a list of missing items in June 2020 after he got out of jail in May 2019. The tenant claimed that all of his items were stolen, when he knew his girlfriend moved the items out. The landlord did not let anyone into the rental unit and did not touch or take the tenant's belongings.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant 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 landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$34,942.00 without leave to reapply.

The tenant failed to go through his list of missing items during the hearing. I repeatedly asked the tenant during the hearing to present his submissions and asked if there was anything else that he wanted to present or respond to. The tenant did not indicate what items were taken, what the value of each item was, or how he came up with the value of each item. He did not review any breakdown of his monetary claim during the hearing.

I find that the tenant failed to provide receipts, invoices, estimates or other documentation to demonstrate the value of the items that he said he lost. He simply provided a list with items and values. I find that the tenant failed part 3 of the above test.

Since the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire 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: September 15, 2020

Residential Tenancy Branch