



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for monetary compensation for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on August 25, 2020. The Interim Decision should be read in conjunction with this decision.

At the outset of the reconvened hearing, the tenant appeared with his father's girlfriend, whom he identified as a witness. The witness was excluded until she was called to testify.

I confirmed that the landlord sent his evidence to the tenant, as ordered in the Interim Decision, by registered mail sent on August 25, 2020 and the tenant received it.

As for the "lease break" document the tenant stated he would try to retrieve from the co-tenant, the tenant stated he contacted the co-tenant and learned the co-tenant did not keep a copy of the document. The landlord maintained that he could not locate the lease break document. I took oral testimony as to the content of the lease break document.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord, as claimed?

Background and Evidence

The tenant testified the tenancy started in March 2019 on a month to month basis. The landlord testified that a co-tenancy agreement started on December 1, 2019 for a one year fixed term.

The parties were in agreement the rent was set at \$2000.00 payable on the first day of every month and the landlord collected a security deposit of \$1000.00.

The rental unit was a suite located on the same property where the landlord resides. The tenancy agreement was entered into by the tenant and one other co-tenant.

The tenant seeks compensation from the landlord for property he claims the landlord unlawfully disposed of. Below, I have summarized the parties' respective submissions.

The tenant testified that he went to live with his father to self-isolate when the COVID-19 pandemic started.

The tenant initially testified that he and his father packed up his belongings into boxes on March 26, 2020 and they placed his possessions in a corner of the living room in the rental unit, then returned to his father's house that evening, and then returned to the rental unit in the morning of March 27, 2020 and found his possessions were gone. Instead they found a cleaning lady was in the rental unit and she said there were no possessions in the rental unit and to talk to the landlord. The tenant talked to the landlord and the landlord told him he had junk removal come and take everything away.

The landlord testified that he had not had any communication or seen the tenant at the property since early February 2020 and that text messages with the co-tenant showed the co-tenant was also having difficulty reaching the tenant. On March 10, 2020 the co-tenant informed the landlord that the tenant was moving out to take care of his sick grandmother and that he may have to find another roommate. A lease break document was signed in late March 2020 to end the tenancy effective April 30, 2020. The co-tenant moved out in mid-April 2020 and permitted the landlord entry into the rental unit approximately 3 or 4 days before April 30, 2020 to do a pre-inspection of the unit. The landlord observed what appeared to be abandoned junk in the rental unit such as a couch, some clothes, a TV, and a package of chicken on the floor. The landlord communicated with the co-tenant on April 28, 2020, via text message, that he would like to get a junk removal company in to remove the remainder of the possessions on the morning of April 30, 2020 and the co-tenant responded with "sounds good", via text,

which the landlord took to mean the co-tenant was agreeable to that. The landlord received the keys from the co-tenant on April 30, 2020 and the landlord had the junk removal company remove the abandoned property at approximately noon on April 30, 2020.

I noted the discrepancy in the dates to the tenant. The tenant responded that late April 2020 is likely accurate and that it was April 26, 2020 that he packed his possessions into boxes with his father and returned to the property on April 27, 2020 to retrieve them. The tenant then changed his testimony again to state it was the morning of April 30, 2020 that he returned to the property to retrieve his possessions and he found them gone.

The tenant acknowledged that he did not make any attempt to communicate with the landlord after early February 2020 with the landlord despite his long absences from the property, claiming the landlord was difficult to find. Then, the tenant acknowledged the landlord lived in another unit on the same property.

The tenant called his witness to testify. The witness testified that it was in the morning of April 30, 2020 that the she, the tenant, and the tenant's father went to the property to retrieve the tenant's possessions from the rental unit and they found they were already gone. They proceeded to have a conversation with the landlord and the landlord acknowledged he had them removed by a junk removal company.

The tenant was of the position the landlord could not remove his possessions from the property before noon on April 30, 2020 due to the lease break document and the landlord prematurely removed his possessions in the morning before the lease was over. The tenant seeks compensation \$18235.19. The tenant provided a listing of items, including expensive electronics, furniture and other household good, along with some receipts and price lists.

The landlord was of the position the tenant is not entitled to the compensation he seeks because there was only abandoned junk at the property and that he had the co-tenant's authorization to remove the junk.

I enquired with the tenant as to whether he had attempted to have the co-tenant appear as a witness at this proceeding. At the first hearing of August 25, 2020 the tenant stated the co-tenant was willing to testify; however, at the reconvened hearing the co-tenant did not appear. The tenant stated he had sent messages to the co-tenant in the morning before the reconvened hearing and had not received a response from the co-

tenant. Then, the tenant explained the co-tenant could not appear because he was at work.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

In this case, I was provided opposing testimony as to what was left in the rental unit at the end of April 2020. The tenant provided a list of electronics and household items valued at over \$18000.00 whereas the landlord characterized the possessions as being abandoned junk. The tenant did not call his father to testify as to what was packed up and left at the property on or about April 26, 2020. Nor, did the tenant have his co-tenant appear for the hearing to describe what possessions were left at the property.

The tenant also provided varying dates as to when he was at the property; whereas, the landlord provided clear and consistent submissions concerning dates when the tenancy ended and provided several text messages as evidence that show communication with the co-tenant that are also consistent with the dates provided by the landlord.

Overall, I found the tenant's testimony not reliable and his position was not corroborated by other evidence. The tenant's witness provided testimony consistent with the landlord, that they returned to the property on April 30, 2020; however, the witness called to testify did not describe the items left at the property when the tenant packed them up in the days preceding April 30, 2020 if in fact he did go to the property and pack his possessions and leave them there, as he stated.

A tenancy ends in a manner provided under section 44 of the Act. Parties may agree to end a tenancy by way of written agreement and I heard the parties executed a lease break document that had an effective date of April 30, 2020. However, section 44(1)(d) also provides that a tenancy ends when a rental unit is vacated or abandoned by the tenant(s). The landlord testified the co-tenant had moved out in mid-April 2020 and the landlord had not seen or heard from the tenant since February 2020. The tenant acknowledged he had not had communication with the landlord since February 2020 and that he had been away from the property, living with his father, and this supports the landlord's statements. Given the accuracy of the landlord's testimony concerning dates, I accept the landlord's testimony that the co-tenant moved out in mid-April 2020 but retained the keys to the rental unit until April 30, 2020.

On April 28, 2020 the landlord contacted the co-tenant and advised he is going to book junk removal for the morning of April 30, 2020 and asks the co-tenant if he has heard from the tenant. The co-tenant responds that he has heard from the tenant and "sounds good".

In reading the text messages of April 28, 2020 and considering the circumstances, I find the landlord's interpretation of the meaning of the co-tenant's message is reasonable: that the co-tenant authorized the landlord to have the remaining possessions disposed of as junk. I am of the view that had valuable possessions been left behind in the rental unit by the tenant or co-tenant, the co-tenant would have had a different response.

In co-tenancy agreements, co-tenants are treated as one entity. For example, to end a co-tenancy, only one of the co-tenants need to give notice to end tenancy and the tenancy ends for all of the co-tenants. Also, one co-tenant may be held responsible to pay all of the rent, regardless of how many co-tenants are on the agreement. Similarly, a landlord may refund all of a security deposit to one co-tenant regardless of which co-tenants paid the security deposit initially. It is upon co-tenants to apportion any debt or refund due to or receivable from the landlord amongst themselves.

In keeping with this same rationale, it is not upon the landlord to try to determine which co-tenant owns certain possessions in a rental unit and if one co-tenant authorizes the landlord to dispose of items as junk at the end of the tenancy, rather than store them, I find that sufficient for the landlord to dispose of the possessions pursuant to section 24(4) of the Residential Tenancy Regulations. Accordingly, if a dispute arises between the co-tenants about the authorization given to the landlord by one co-tenant, the co-tenants have to resolve that dispute amongst themselves or in the appropriate dispute resolution forum.

In light of all of the above, I found the tenant's submissions unreliable and I am satisfied the landlord had authorization from the co-tenant to remove any remaining possessions from the rental unit and dispose of them as junk rather than store them. Therefore, I find the tenant has not satisfied me he is entitled to the compensation he is seeking from the landlord and I dismiss his Application for Dispute Resolution without leave to reapply.

As I said to the tenant during the hearing, the tenant may have a dispute with his co-tenant since the landlord acted upon the co-tenant's authorization. Disputes between co-tenants may be resolved in the appropriate forum such as Civil Resolution Tribunal or Small Claims court.

Conclusion

The tenant's Application for Dispute Resolution 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: October 14, 2020

Residential Tenancy Branch