



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, MNSD, RPP, MNDCT, FFT**

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- Compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to sections 51 and 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- An order for the return of personal property pursuant to section 65;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant and the landlord both attended the hearing. An agent for the landlord represented him and spoke on the landlord's behalf. (“the landlord”).

As both parties were present, service of documents was confirmed. The landlord's agent acknowledged service of the tenant's Application for Dispute Resolution and stated that he had no concerns with timely service of documents. Pursuant to sections 89 and 90 of the *Act*, the Notice of Dispute Resolution Proceedings package is deemed served upon the landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision. Not all evidence that was submitted will be summarized. Only evidence which underpins my decision will be referenced.

Preliminary Issue

The tenant sought compensation in the amount of \$999.99 in his application, indicating “the landlord stolen all my property and a car”. (reproduced as written). The tenant stated at the commencement of the hearing that his belongings were worth \$25,000.00 and he seeks compensation in that amount, not the \$999.99 as described in his application. The tenant testified he was unable to enter the desired dollar amount when filing his application online.

I advised the tenant that pursuant to rule 2.2 of the Residential Tenancy Branch Rules of Procedure, the tenant’s claim is limited to what is stated in the application. As such, the application to amend the application to increase it to \$25,000.00 was dismissed at the commencement of the hearing.

Background and Evidence

The tenant provided his testimony first, in accordance with rule 7.18 of the Residential Tenancy Branch rules of procedure.

The tenant testified that he rented a room in the landlord’s house on April 1, 2019. The landlord collected a security deposit in the amount of \$210.00 from the tenant when the tenant first moved in. The tenant further testified that the landlord is the owner of the house he resided in. The tenant states that the landlord was frequently at the house, although the landlord did not live there.

On September 17, 2019, the tenant was accused of sexually assaulting the landlord’s wife. He was arrested by the police that day and was released on bail on September 20, 2019. A copy of the terms of bail was provided as evidence by the tenant. Included in the terms of bail were conditions that the tenant have no contact directly or indirectly with the landlord or his wife and that the tenant not attend any known residence, place of employment or educational institution of the landlord or his wife.

The tenant testified that he was told not to go back to the room he rented from the landlord while he was on bail. When the charges were stayed by the crown counsel prosecutor on August 26, 2020, his bail terms were cancelled, and he could go back. Very soon thereafter, date unknown, the tenant returned to his former residence and was told that the contents of his room had been thrown out. The tenant also alleges that on this day, his iPhone was smashed by another tenant living in the house. The tenant alleges the landlord paid this other tenant living in the house to do so.

The tenant testified that during the time he was absent from the house, the landlord stole everything the tenant owned, including his passport, his SIN card and everything he owned. The tenant did not provide a list of possessions he claims were stolen, but testified he had a television set and a car. A single, blurry photograph of what the tenant testified was his room was also provided as evidence. I note the tenant also provided as evidence a vehicle transfer tax form indicating the sale of a 1997 Toyota Camry with a purchase price of \$500.00. The date of sale of the car is not visible on the form.

The tenant seeks to recover the \$210.00 he paid as a security deposit when he moved into the house. The tenant testified he has not provided the landlord with his forwarding address as he has been homeless since the incident of September 17, 2019. He acknowledged he can receive mail at the address provided on his Application for Dispute Resolution.

The landlord's agent testified that the landlord owns the property the tenant was living in. The property is a single family home, rented out room by room to various different occupants. The landlord testified that he lives in this home and another home. The landlord testified the house has multiple kitchens and baths which each of the home's occupants have use of. The landlord testified he prepares his meals in these kitchens and has use of the bathrooms in the house. The landlord's agent testified that he had filed an application for an early end to the tenancy and that application was heard on October 7, 2019. The file number for the previous hearing is recorded on the cover page of this decision. The arbitrator in that hearing determined that since the owner of the living accommodation shares a kitchen facility with the other occupants of the accommodation, the Residential Tenancy Act does not apply pursuant to section 4(c) of the Act.

The tenant responded, saying that the landlord never lived in the house while he lived there.

The landlord testified that within a week of the September 17, 2019 incident, the tenant attended the house in the company of a police officer and was permitted to go into his room and retrieve his belongings while on bail. The landlord testified that he contacted the Residential Tenancy Branch and was told that whatever remained in the room should be stored for 60 days and if the tenant did not contact the landlord during this time, the landlord could dispose of the tenant's goods. The landlord testified that he put the tenant's goods into storage and finally disposed of them in July of 2020, having not heard from the tenant since the incident of September 2019.

The tenant denies that he ever went back to the rental unit with a police officer a week after being released on bail. The tenant sought from the landlord a police case number to verify the landlord's statement.

Lastly, the landlord testified that he is holding the tenant's security deposit and is willing to return it to the tenant. He just didn't have a forwarding address for the tenant to return it to him.

Analysis

Jurisdiction was declined by an arbitrator of the Residential Tenancy Branch pursuant to section 4(c) on October 07, 2019 due to that arbitrator's finding that the landlord and the tenant shared kitchen facilities. That arbitrator came to the decision to decline jurisdiction based on the evidence before him or her. Based on the evidence before me, specifically the testimony of the landlord that he resided in "another residence" as well as this one leads me to the conclusion that on a balance of probabilities, the landlord did not occupy the residential property on a full time basis alongside the multiple tenants living in the house sharing kitchens and bathroom facilities. I find it reasonable to conclude that the landlord would likely find it preferable to reside in his other residence, not sharing those facilities.

I also accept the tenant's testimony that the landlord did not reside in the rental unit during the time the tenant resided at the residential property. Based on my findings, I find there was a landlord/tenant relationship between the parties and that the *Residential Tenancy Act* applies to this case.

The first issue sought by the tenant is for \$999.99 in compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to sections 51 and 67. As it is clear to me that the tenancy did not end pursuant to the issuance of a notice to end tenancy for landlord's use, the tenant is not entitled to this compensation. This portion of the tenant's claim is dismissed.

Second, the landlord agreed to return the tenant's security deposit of \$210.00. The tenant agreed that a cheque could be sent to him at the address provided on his Application for Dispute Resolution. **By consent, the tenant is awarded a monetary order in the amount of \$210.00.** Both parties testified they understood and agreed to this term and that the term is legal, final, binding and enforceable, which settles this aspect of this dispute.

Third, the tenant seeks an order that the landlord return his personal property and an order for compensation for the possessions he says were “stolen” by the landlord.

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. Pursuant to section 24(1), 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, or if the tenant leaves the personal property on residential property that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or from which the tenant has removed substantially all of his or her personal property. Pursuant to section 24(2)(b), the landlord is entitled to consider the property abandoned if the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property. Pursuant to section 25, the landlord must 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 and may dispose of the property if the landlord reasonably believes that the property has a total market value of less than \$500.00.

While I fully accept that the tenant's possessions were gone by the time he went back to retrieve them, in order to grant compensation to the tenant, I must find that the loss of the possessions resulted from a violation of the *Act*, regulations or tenancy agreement

by the landlord. (point 2 of the 4-point test). I find there to be no violation of the *Act* or regulations or tenancy agreement. Specifically, I find that the landlord complied with section 25 of the regulations in storing the tenant's possessions for a period of 60 days before disposing of them. Section 25 indicates the landlord can dispose of the tenant's property if it has a total market value of less than \$500.00. From the tenant's evidence, I no way of determining the market value of the tenant's possessions or if it was worth more than \$500.00. I find the landlord was entitled to dispose of the tenant's goods in July 2020, at least nine months after he last heard from the tenant.

Turning next to the value of the damage or loss (point 3 of the 4-point test). The tenant provided a transfer tax form for the value of a 1997 Toyota Camry that was once valued at approximately \$500.00. From the undated form and a lack of any photographs of it, I cannot make a reasonable determination of the value of the car. The tenant's application for compensation for the remainder of his possessions is likewise hampered by insufficient evidence to establish their values. With the exception of a receipt for a cell phone he claims was damaged by somebody other than the landlord, the tenant did not provide any list of his possessions, estimate of their values or additional receipts to show how much he paid for them. The tenant's sole evidence to show the existence of his possessions was a single blurry photograph of what the tenant says is his room. Based on this insufficient evidence, I find the tenant has failed to establish the value of the loss he claims he sustained (point 3).

Lastly, the tenant provided no evidence of letting the landlord know that he valued the possessions he abandoned the night he was arrested by the police. While I accept that the tenant was prohibited from contacting the landlord or his wife, if the tenant was concerned about his possessions, he could have sought a variation to his bail to allow him to retrieve his personal belongings or had his lawyer contact the landlord to make arrangements to get them. Although the parties disagree as to whether this happened right after the tenant was released on bail, the tenant was still obligated to mitigate his damages by at least letting the landlord know he was concerned about them and wanted them back. I find the tenant has failed to take the steps necessary to mitigate his loss (point 4 of the 4-point test).

The tenant has not provided sufficient evidence to establish the 4 points in the test to establish his claim for compensation. Likewise, I find the tenant has provided insufficient evidence to establish the landlord is in possession of the tenant's belongings. The tenant's claim to have his belongings returned and his application for compensation are dismissed without leave to reapply.

The tenant also sought compensation for a cell phone he claims was damaged by another tenant living at the rental property hired by the landlord to damage his phone. It's the applicant's burden to prove it's more likely than not the events happened as claimed by the applicant. I find the tenant has provided insufficient evidence to establish the landlord "hired" another tenant to damage his cell phone. While it is possible the tenant's phone was damaged during a confrontation with this other tenant, the proof that this person did so on behalf of the landlord while working for the landlord has not been sufficiently proven. This portion of the tenant's claim is dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord agreed to return the tenant's security deposit of \$210.00 during the hearing. **By consent, the tenant is awarded a monetary order in the amount of \$210.00.**

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$210.00.

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: June 10, 2021

Residential Tenancy Branch