



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twenty One Holdings Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL** _____

Introduction

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

- A monetary award for damages or loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any materials of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began on November 9, 2017. The current monthly rent is \$1,610.00 payable on the first of each month. The rental unit is a suite in a multi-unit rental building with approximately 100 units. The applicant is the former landlord for the property as the building changed ownership in April 2021.

The parties agree that in the summer of 2019 the landlord provided a portable air conditioning unit to the tenant. The landlord submits that the air conditioning unit was loaned to the tenant and remains their property. The landlord submits that the air conditioning unit does not form a part of the tenancy agreement and was not transferred to the new owners of the property with the tenancy.

The tenant submits that the air conditioning unit was provided to the tenant with no documentation or agreement that it would be returned to the landlord.

The landlord submits that they have made written demand to the tenant to return the air conditioning unit in 2020 though they did not provide a copy of such correspondence into evidence and the tenant disputes that any such written demand was made. The landlord submitted into evidence copies of correspondence dated March 2021 demanding the return of the air conditioning unit. The landlord also provided receipts for the purchase of the air conditioning unit in 2019 showing the price paid of \$559.99.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to prove their case on a balance of probabilities lies with the applicant.

In the present case the parties agree that the landlord provided the tenant a portable air conditioning unit in the summer of 2019. The parties disagree on whether this was a loan by the landlord with the landlord entitled to the return of the unit upon demand.

I find insufficient evidence in support of the landlord's position that the air conditioning unit remained their possession with the tenant responsible to return the unit or repay them for its value. The parties made no documentary recording of how the air conditioning unit was to be treated at the time that it was provided. There is no amendment to the tenancy agreement governing its use or agreement transferring title. Furthermore, while the parties agree that the property has been transferred to new owners no information was provided as to whether the air conditioning unit was included in the transfer of the property. I find that there is a dearth of documentary evidence pertaining to the air conditioning unit.

I do not find the landlord's submission that the absence of documentary evidence pertaining to the air conditioning unit and its transfer is evidence that the ownership of the unit remained with them to be particularly persuasive. I find the absence of any documentary agreement pertaining to the unit or internal notes recording it being provided to the tenant to not support that the unit was loaned with the expectation of it being returned. I find the absence of documentary materials to be evidence of poor business practices but does not support that the unit was meant to be returned upon demand.

I find little documentary evidence to support the landlord's testimony that they made request for the return of the unit prior to March 2021. Based on the evidence before me it appears that the landlord provided the air conditioning unit in 2019 and made no reference to the unit until shortly before they ceased being a landlord in March 2021.

I am not satisfied, based on the evidence before me, that the air conditioning unit provided to the tenant in the summer of 2019 remained the possession of the landlord such that its continued use by the tenant is a breach of any agreement between the parties. I find that the landlord has failed to meet their evidentiary burden to show on a balance of probabilities that they have suffered any losses attributable to a breach on the part of the tenant. Consequently, I dismiss the landlord's present application.

As the landlord was unsuccessful in their application they are not entitled to recover the cost of filing.

Conclusion

The landlord's application is dismissed in its entirety 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 9, 2021

Residential Tenancy Branch