



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDCT, RPP

Introduction

In this dispute resolution application, the tenant applied for compensation, for the return of their security deposit, and, for the return of their personal property, pursuant to sections 67, 38, and 65, respectively, of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing on October 1, 2021, along with the tenant's advocate (who did not speak or make any submissions) and the landlord's wife (whose name I did not record and from whom I did not hear any testimony).

No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained. The tenant testified that he served the Notice of Dispute Resolution Proceeding on the landlord on June 18, 2021. The landlord did not dispute this. It should be noted that neither party provided any documentary evidence in respect of this matter.

Preliminary Matter: Jurisdiction of *Residential Tenancy Act*

The Act applies to all residential tenancies between landlords and tenants unless such a tenancy is excluded under [section 4](#) of the Act. While neither party raised the issue of jurisdiction the landlord twice referred to the "style" of tenancy as that being similar to what would be offered through Airbnb: furnished accommodation. The tenant was rented a room and he shared the bathroom and kitchen facilities with other tenants (but not with the landlord, who resides elsewhere).

Where an Airbnb-style living accommodation might fall under exclusion is if that living accommodation is "occupied as vacation or travel accommodation" (section 4(e) of the Act). In this case, however, there is no evidence that the living accommodation was rented out as vacation or travel accommodation. Indeed, that the tenancy began back as September 20, 2020, and lasted almost nine months, precludes the possibility that the tenancy was ever excluded under the Act.

That the rental unit was furnished is immaterial as to whether there existed a tenancy under the Act. Nor is it a factor that there was no written tenancy agreement in this tenancy; no written tenancy agreement does not mean that there is no tenancy. Under section 1 of the Act, "tenancy agreement" means an agreement, *whether written or oral*, between a landlord and a tenant respecting possession of a rental unit.

Given the above, for the purposes of the Act and the application before me, I conclude that there existed a tenancy between the tenant and the landlord. Therefore, the tenant and landlord are subject to the rights and obligations set forth in the Act.

Issues

1. Is the tenant entitled to an order for the return of their personal property?
2. Is the tenant entitled to the return of their security deposit?
3. Is the tenant entitled to compensation for rent paid?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenant gave evidence that the tenancy began on September 30, 2020 and ended on June 2, 2021. Monthly rent was \$600.00 and the tenant paid a security deposit of \$300.00. As noted by the landlord, there is no written tenancy agreement in existence.

On June 2, 2021, the tenant returned home to find that the landlord had thrown most of his property (comprising three canes, a shower bench, a slow cooker, and a digital bathroom scale) onto the lawn. He seeks the return of this personal property. The landlord took back the keys and prevented the tenant from accessing the rental unit. The tenant testified that he was given no written notice to end the tenancy.

The tenant seeks the return of his security deposit in the amount of \$300.00. He also seeks compensation in the amount of \$600.00 for "costs related to finding a new place" to live. No receipts for any of these costs were submitted into evidence.

The landlord testified that there was "no need" for a written tenancy agreement because he simply rented rooms out to various tenants; like an Airbnb, he remarked.

The landlord then provided lengthy and detailed testimony about the unacceptable conduct by the tenant and another tenant (the advocate who attended the hearing).

After tolerating lots of the tenant's partying, drinking, and smoking, the landlord finally "gave those guys the boot." The other tenant left in April 2021, but the tenant remained in the rental unit for month after month. No written notice to end tenancy was given, rather, the landlord gave the tenant a verbal notice to end the tenancy.

According to the landlord, the tenant's testimony about not giving notice is "a bunch of hogwash" and the tenant was well aware that the tenancy was ending.

The landlord then described the state of the property, including describing the tenant's room as a "bio-catastrophe" with uneaten food, three bags of beer cans, and twenty-seven folder beer boxes. "His room was an absolute bacteria factory," the landlord remarked, and he estimated that the tenant probably drank "12,000 beer a year."

As for the tenant's personal effects, the landlord testified that he put all of his belongings outside. In fact, those belongings are still sitting outside on the lawn next to the tree. The tenant is more than welcome to come and get his stuff, the landlord said.

In respect of the security deposit, the landlord explained that he essentially kept it due to the costs associated with cleaning the tenant's room.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Order to Return Personal Property

Section 65(1)(e) of the Act permits an order that "personal property seized or received by a landlord contrary to this Act, or a tenancy agreement must be returned."

In this dispute, the evidence does not persuade me to find that the landlord ever seized the tenant's personal property. To the contrary, the landlord rather unceremoniously dumped various items onto the lawn.

Those items remain on the lawn to this day, “next to the tree.” And the landlord said that the tenant or his friend are more than welcome to come and retrieve the property.

Given the above, the tenant has not discharged the onus of proving on a balance of probabilities that he is entitled to an order under section 65(1)(e) of the Act. Accordingly, this aspect of the tenant’s application is dismissed without leave to reapply.

That said, the landlord is incorrect in believing that he can simply throw away the tenant’s personal property. The landlord is required to take certain steps in securing what may be abandoned property under [Part 5](#) of the *Residential Tenancy Regulation*.

Claim for Return of Security Deposit

Section 38(1) of the Act states the following regarding what a landlord’s obligations are at the end of the tenancy with respect to security and pet damage deposits:

[...] within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant’s forwarding address in writing, the landlord must do one of the following:

- (a) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, there is no evidence that the tenant ever provided his forwarding address in writing to the landlord after the landlord unlawfully locked him out of the rental unit. Further, there is no evidence before me to find that the landlord has the tenant’s current address to which they may forward the tenant’s security deposit. Given this, the tenant’s claim for the return of his security deposit is dismissed, *with* leave to reapply, subject to the proviso below.

The tenant must, after receiving this decision, give his forwarding address in writing to the landlord. Upon receiving the tenant’s forwarding address the landlord must (1) return the security deposit, in full, to the tenant, or (2) file an application for dispute resolution claiming against the security deposit. If the landlord does not return the security deposit or file an application, then the tenant may file an application seeking the return and doubling of the security deposit under section 38(6) of the Act.

Claim for Compensation

The tenant seeks \$600.00 for costs related to finding a new place to live. Section 7 of the Act states that if a party does not comply with the Act the non-complying party must compensate the other for damage or loss that results.

By all accounts, the landlord never gave written notice to end the tenancy as required by sections 46, 47, 48, or 49 of the Act. Verbal notice to end a tenancy carries no legal force or effect and a tenant may disregard and otherwise ignore such a notice. Second, a landlord cannot change locks or other means of access to the residential property unless the landlord provides the tenant with new keys or means that give the tenant access (see section 31 of the Act).

In this dispute, the landlord breached the Act by not ending the tenancy as required by law and by unlawfully preventing the tenant's access to the rental unit. As such, there was clearly more than one breach of the Act by the landlord. It is more than likely that the tenant incurred costs and expenses while finding a new home.

However, what is missing is any documentary evidence of what those costs entailed, such as receipts. Without proof of such costs, I am not persuaded that the tenant incurred \$600.00 in finding a new place to live. As such, the tenant's claim for compensation is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 4, 2021

Residential Tenancy Branch