



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Reliance Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 18, 2021 (the “Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenants appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony and documentary evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started September 01, 2017 and was for a fixed term ending August 31, 2018. The tenancy then became a month-to-month tenancy. Rent at the start of the tenancy was \$2,000.00 per month due on the first day of each month. The Tenants paid a \$1,000.00 security deposit and \$1,000.00 pet damage deposit.

The Tenants sought \$16,863.35 for the loss of two bikes which were stored in the building's storage room.

The Tenants provided the following testimony and submissions. The Tenants stored two bikes in the building's storage room with the permission of the building manager at the time. The bikes were stored in the room for three years. The bikes were tagged with the Tenants' rental unit number. A new building manager started in September of 2020 and removed the lock on the door of the storage room while the bikes were still in the room. The new building manager left the storage room unlocked for a junk removal company to clear it out. The bikes were stolen after the new building manager left the storage room unlocked. The junk removal company did not take the bikes. The Landlord had a responsibility to take care of the bikes.

The Tenants submitted that Part 5 of the *Residential Tenancy Regulation* (the "*Regulations*") in relation to abandonment of personal property should apply including section 30 which states:

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

(emphasis added)

The Tenants submitted that Part 5 of the *Regulations* applies because the Landlord thought the bikes were abandoned property.

The Tenants acknowledged they do not know what happened to their bikes and that they presume the bikes were stolen because of the Landlord's negligence.

The Tenants submitted the following documentary evidence:

- TD Insurance Schedule of Loss
- Photos including notes
- Photos of the bikes
- Emails between the parties
- Monetary Order Worksheet
- Tenancy agreement and Condition Inspection Report

The Agent provided the following testimony and submissions. The Landlord did not breach the *Act* in any way. The building manager notified tenants that they were having the locker room cleaned. The Tenants confirmed having a locker but never mentioned the existence of the bikes to the new building manager. There was no further discussion with the Tenants about where they stored their bikes because it is building storage. Nobody knows if the bikes were stolen or sold by the Tenants themselves. The building manager told the Agent that the building storage room did not have a lock on it when they came across it. The Landlord did not breach section 31 of the *Act* addressing prohibitions on changes to locks and other access because this applies to common areas and rental units whereas the building storage room is the Landlord's storage room. There is no solid proof that the Tenants tried to mitigate their loss. The Agent does not even know if the bikes were in fact in the building storage room or not. The building storage room was unlocked from September 2020 to March 2021. The Agent does not know who removed the lock, it could have been anyone.

In reply, the Tenants provided the following testimony and submissions. The Tenants should not have had to notify subsequent building managers about their bikes being in the building storage room after notifying the first and second building manager of this. This is the first time the Tenants have heard that the building storage room was unlocked when the new building manager started.

The Tenants could not point to documentary evidence to support their position that the building manager removed the lock on the building storage room. The Tenants acknowledged that their position depends on a finding that an employee of the Landlord removed the lock because this is what the Tenants say is the breach.

The Landlord submitted an email with the building manager at the relevant time.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I decline to award the Tenants the compensation sought for the following reasons.

The Tenants state that their bikes were stored in the building storage room. I understand from the testimony and submissions of the parties that the building storage room is the Landlord's storage room for use by the Landlord and whomever the Landlord allows to use it. Any use of the Landlord's storage room was at the Tenants' own risk because they did not have control over who did or did not enter that room, who

did or did not have access to that room or whether that room was locked or unlocked given it was the Landlord's storage room. Nor do I find that the Landlord had any duty to maintain their own storage room in any particular way, such as with a lock on the door, because this was not the Tenants' space or even a common area of the building. The Landlord was free to do with the storage room what they wished.

The only basis the Tenants pointed to for the compensation sought is Part 5 of the *Regulations*. Part 5 of the *Regulations* does not apply to the Tenants' bikes. Section 24(1) of the *Regulations* states:

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or

(ii) from which the tenant has removed substantially all of the tenant's personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph

(1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) 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.

(emphasis added)

The Tenants' bikes were clearly not abandoned property. Further, there is no compelling evidence before me showing that the Landlord or an agent for the Landlord thought the bikes were abandoned property or that they did anything with the bikes.

I also note that the entire argument of the Tenants centers around an agent for the Landlord removing a lock from the Landlord's storage room; however, there is no compelling evidence before me that this occurred.

I also note that there is no compelling evidence before me as to what actually happened to the bikes.

In the circumstances, I find the Tenants have failed to prove a breach by the Landlord and failed to prove mitigation. Therefore, I am not satisfied the Tenants are entitled to compensation.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 03, 2022

Residential Tenancy Branch